

**INTERGOVERNMENTAL AGREEMENT  
FOR THE PROVISION OF  
911 EMERGENCY COMMUNICATIONS SERVICES  
Between  
DEKALB COUNTY, GEORGIA and  
THE CITY OF DUNWOODY, GEORGIA**

**THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia (“County”) and the City of Dunwoody, Georgia (“City”).**

WHEREAS, DeKalb County, Georgia is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City is a municipality created by the 2008 Georgia General Assembly pursuant to Senate Bill 82 (hereinafter referred to as “SB 82”); and

WHEREAS, SB 82 provides that the City begins operations December 1, 2008 and Section 6.03(c) requires the County to “...provide within the territorial limits of the City all government services and functions which DeKalb County provided in 2008”; and

WHEREAS, the residents of Dunwoody have paid the same taxes as paid by residents of unincorporated DeKalb County for 2008 and the payment of those county taxes entitles the City and its residents to be provided with the 2008 county governmental services and functions until December 31, 2008 without any further compensation from the City or its residents to the County; and

WHEREAS, this intergovernmental agreement therefore only becomes effective on the date that the City will begin paying for services as set forth in this Agreement; and

WHEREAS, the County and City desire to enter into an Intergovernmental Agreement to provide 911 emergency communications services within the boundaries of Dunwoody for a period of one year year beginning January 1, 2009 ; and

WHEREAS, the County and the City wish to establish the cost of 911 emergency communications services to be provided by the County to the City pursuant to this Agreement; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions.

**NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:**

**ARTICLE 1  
PURPOSE AND INTENT**

The purpose of this Agreement is to provide the vital and necessary communications link between Dunwoody' citizens, the DeKalb County Police department, and the Dekalb County 911 Communications Center through use of the County's consolidated 911 call reception and radio dispatching of requests for public safety services

## **ARTICLE 2 DEFINITIONS**

For the purposes of this Agreement, the following terms shall be defined as:

2.1 ***Chief of Police*** means the DeKalb County police chief or designee.

2.2 ***911 Emergency Communications Services*** means the receipt of incoming calls for service through the enhanced 9-1-1 telephone system for emergency and non emergency requests for medical, police, fire and other public safety services, and initiation of the appropriate response action. The service also includes the coordination of requests for support and auxiliary services from field units and refers crimes and incidents not requiring an on-scene investigation by a field unit to the appropriate police precinct or agency. This is considered the vital and necessary communications link between citizens and DeKalb County Police Department through consolidated, Enhanced 911 call reception and radio dispatching of requests for public safety services. In the event this Agreement remains in force after the creation of the Dunwoody police department, this will also be considered the vital and necessary communications link between citizens through the DeKalb County Police Department and to the Dunwoody police department through consolidated, Enhanced 911 call reception and radio dispatching of requests for public safety services. The Countywide 800 MHz trunked radio system (hereinafter "County 800 MHz Radio System") is the primary method of dispatching calls for service to DeKalb County field units and the DeKalb County contracted private ambulance services dispatched through 911.

## **ARTICLE 3 TERM OF AGREEMENT**

The term of this Agreement is for two years, commencing January 1, 2009 at 0000 hours and concluding at 2400 hours on December 31, 2009. This Agreement shall automatically renew without further action by the City or the County on the first of each succeeding year for an additional one (1) year for a total lifetime Agreement of fifty (50) years, unless previously terminated in accordance with the termination provisions of this Agreement. At the conclusion of this term, the City will be solely responsible for providing all 911 emergency communications services within its boundaries, unless extended by mutual Agreement approved by both governing bodies. The parties agree that, as of that date, the County's obligation (pursuant to O.C.G.A. 36-31-8 and Section 6.03 of SB 82) to provide 911 emergency communications services shall terminate, and that this provision constitutes the agreement for the assumption of these 911 emergency communications services by the City as contemplated by O.C.G.A. 36-31-8 and Section 6.03 of SB 82.

## **ARTICLE 4 COMPENSATION AND CONSIDERATION**

For the 911 emergency communication services to be rendered pursuant to this Agreement the County remains entitled to impose and retain a monthly 911 charge upon each wired and wireless telephone subscriber served by the County's 911 service, as provided by O.C.G.A. § 46-5-134. Nothing in this Agreement shall preclude the County's right to continue to collect such fees for 911 access and services performed during the term of this Agreement as for calls originating within the City of Dunwoody.

## **ARTICLE 5 CHIEF OF POLICE**

The Chief of Police will direct and manage the daily 911 emergency communications services in the City and supervise the delivery of 911 emergency communications services contracted for in this Agreement.

## **ARTICLE 6 SERVICES**

6.1 During the term of this agreement, the County shall provide the same 911 emergency communications services to the City that are provided to unincorporated DeKalb County in 2009. Such 911 emergency communications services shall equal or exceed the 911 emergency communications services provided by the County in 2008 to the area that comprises the territorial limits of the City. The County shall provide 911 emergency communications services on a continual 24-hour per day basis, seven days a week.

## **ARTICLE 7 EQUIPMENT**

The County agrees to provide DeKalb County personnel assigned to work within the City with all necessary equipment in connection with this Agreement in order to perform the agreed upon 911 emergency communications services, in accordance with DeKalb County Police policies and procedures. The County agrees to maintain said equipment and to provide replacements as necessary during the term of the Agreement.

## **ARTICLE 9 EMPLOYMENT STATUS**

9.1 All County personnel assigned under this Agreement are and will continue to be employees of the County for all purposes, including but not limited to: duties and responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions.

9.2 All County personnel assigned under this Agreement are and will continue to be part of the DeKalb County police department.

## **ARTICLE 10 RECORDKEEPING AND REPORTING**

Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

## **ARTICLE 11 CITY-COUNTY RELATIONS**

The County shall be the sole provider of 911 emergency communications services within the City during the term of this Agreement.

## **ARTICLE 12 TRANSITION**

The County and City agree that ninety (90) days prior to the end of this Agreement, the City Manager and the Executive Assistant will meet and confer to effect a smooth transition.

## **ARTICLE 13 TERMINATION AND REMEDIES**

13.1 The City may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the County. If the City intends to terminate this Agreement for cause, the City must notify the County in writing, specifying the cause, extent and effective date of the termination. The County shall have thirty three (33) days after the date of the written notice from the City to cure the stated cause for termination.

13.2 On December 1, 2011 at 2400 hours, the parties agree that the County's obligation pursuant to O.C.G.A. 36-31-8 and Section 6.03 of SB 82 to provide the government functions and services described in this Agreement shall terminate as contemplated by O.C.G.A. 36-31-8 and Section 6.03 of SB 82.

13.3 Beginning December 2, 2011 at 0000 hours, the County may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the City. If the County intends to terminate this Agreement for cause, the County must notify the City in writing, specifying the cause, extent and effective date of termination. The City shall have thirty three (33) days after the date of the written notice from the County to cure the stated cause for termination.

13.4 The parties reserve all available remedies afforded by law to enforce any term of condition of this Agreement.

## **ARTICLE 14**

## **NOTICES**

All required notices shall be given by first class mail, except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. The parties agree to give each other non binding duplicate facsimile notice. Notices shall be addressed to the parties at the following addresses:

If to the County:

Richard Stogner, Executive Assistant  
1300 Commerce Drive 6<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-2883, Office number  
404-371-2116, Facsimile number

With a copy to:

William J. Linkous, III County Attorney  
1300 Commerce Drive, 5<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-3011 Office number  
404-371-3024 Facsimile number

If to the City:

City of Dunwoody

\_\_\_\_\_, Georgia  
Office number:  
Facsimile number:

With a copy to:

Brian Anderson, City Attorney  
(insert address, telephone number and facsimile number)

## **ARTICLE 15 EXTENSION OF AGREEMENT**

This Agreement may be extended at any time during the term by mutual consent of both parties so long as such extension is approved by official action of the City Council and approved by official action of the County governing authority.

## **ARTICLE 16 NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

## **ARTICLE 17 ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

## **ARTICLE 18 SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

## **ARTICLE 19 BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

## **ARTICLE 20 INDEMNITY**

20.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City defend, indemnify and hold harmless the County and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the City, its employees, officers and agents. The County shall promptly notify the City of each claim, assert all statutory defenses, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation.

20.2 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the County defend, indemnify and hold harmless the City and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the County, its employees, officers, and agents. The City shall promptly notify the County of each claim, assert all statutory defenses, cooperate with the County in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the County participation.

20.3 The immunity and indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the performance of this Agreement.

## **ARTICLE 21 COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers on the day and year first above written.**

**SIGNATURES APPEAR ON THE FOLLOWING PAGES**

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_(SEAL)

Vernon Jones  
Chief Executive Officer  
DeKalb County, Georgia

ATTEST:

\_\_\_\_\_  
Michael Bell  
Ex Officio Clerk of the  
Board of Commissioners of  
DeKalb County, Georgia

APPROVED AS TO FORM:

\_\_\_\_\_  
William J. Linkous, III  
County Attorney

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Richard Stogner  
Executive Assistant

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**



**CITY OF DUNWOODY, GEORGIA**

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Ken Wright  
Mayor

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Municipal Clerk (SEAL)

**Approved as to Form:**

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Brian Anderson  
City Attorney

**Approved as to Substance:**

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Warren Hutmacher  
City Manager

## **Chapter 15: Business Occupation Tax, Licenses, and Regulation**

### **Article 1: Business and Occupation Taxes**

\*State law reference(s) Business and occupation taxes, O.C.G.A. §48-13-5 et seq.

#### *Section 1: Generally*

- (a) Each person engaged in a business, trade, profession or occupation whether with a location within the City of Dunwoody or in the case of an out of state business with no location in Georgia exerting substantial efforts within the City of Dunwoody pursuant to O.C.G.A Section 48-13-7 shall pay an occupational tax for said business, trade, profession or occupation.
- (b) Occupation taxes shall be based upon gross receipts in combination with profitability ratio and number of employees. The profitability ratio for the type of business will be determined from nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.
- (c) The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any profession, trade or calling.

#### *Section 2: Definitions*

Unless specifically defined elsewhere, as used in this Article, the term:

- (a) *Administrative fee* means a component of an occupation tax that approximates the reasonable cost of handling and processing the occupation tax.
- (b) *Business* where used in this Article shall be held to mean any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.
- (c) *Dominant line* means the type of business within a multiple line business from which the greatest amount of income is derived.
- (d) Except as otherwise provided, “*Employee*” means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual’s compensation or whose employer issues to such individual for purposes of documenting compensation a form W-2 but not a form I.R.S. 1099.
- (e) *Gross receipts* means total revenue of the business or practitioner for the period, including without being limited to the following:

- (i) Gross receipts shall include the following:
  - (A) Total income without deduction for the cost of goods sold or expenses incurred;
  - (B) Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
  - (C) Proceeds from commissions on the sale of property, goods, or services;
  - (D) Proceeds from fees charged for services rendered; and
  - (E) Proceeds from rent, interest, royalty, or dividend income.
- (ii) Gross receipts shall not include the following:
  - (A) Sales, use, or excise taxes;
  - (B) Sales returns, allowances, and discounts;
  - (C) Inter-organizational sales or transfers between or among the units of a parent subsidiary controlled group of corporations, as defined by 26 U.S.C. § 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities;
  - (D) Payments made to a subcontractor or an independent agent for services which contributed to the gross receipts in issue;
  - (E) Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this Chapter, if such funds constitute 80 percent or more of the organization's receipts; and
  - (F) Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.
- (f) *License* shall mean a permit or certificate issued by the City that allows an entity to operate lawfully in the City of Dunwoody. A license does not create any rights to operate in violation of any provision of this Code of Ordinances and it may be denied, suspended or revoked by the City at any time pursuant to the procedures set forth herein. This definition applies to any license issued pursuant to this Chapter.

- (g) *Location or office* shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.
- (h) *Occupation tax* means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business.
- (i) *Practitioner of professions and occupants* is one who by State Law requires state licensure regulating such profession or occupation. This definition shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.
- (j) *Regulatory fees* means payments, whether designated as license fees, permit fees, or by another name, which are required by the City of Dunwoody as an exercise of its municipal power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the City of Dunwoody. A regulatory fee does not include an administrative or registration fee. Regulatory fees do not include required occupation taxes for businesses and professions located in the City of Dunwoody.
- (k) *Tax Collector* shall mean an individual duly appointed and named as tax collector to serve in that capacity. In the absence of a duly appointed tax collector, the Finance Director or City Manager may perform the duties of the tax collector.

### *Section 3: Business License Required*

- (a) All persons, firms, companies (including limited liability companies), corporations, (including professional corporations) and other business entities, now or hereafter operating a business within the City of Dunwoody, are hereby required to register their business or office, obtain an occupation tax certificate for their business or office, and pay the amount now or hereafter fixed as taxes and fees thereon as authorized under the provisions of Article 1 of Chapter 13 of Title 48 of the Official Code of Georgia, Annotated, as amended.
- (b) Where a person conducts business at more than one (1) fixed location or has multiple business trade names, each trade name shall be considered to be separate for the purpose

of the occupation tax and the gross receipts of each will be returned on a form furnished by the Finance Department in accordance with the provisions of this Article.

- (c) The occupation tax certificate shall serve as a business license. Additional business licenses may be required as established by the City.
- (d) Stock or manufacturing companies or other companies, subsidiaries, agencies, district offices, branch offices, corporations or individuals, having either their business proper or their general branch offices located within the City of Dunwoody, and either represented by the officers of the company, or any agent, for the purpose of soliciting patronage for the same, or for the transaction of any business pertaining thereto, shall be required to obtain a occupation tax certificate.
- (e) All licenses granted under this Article shall expire on December 31 of each year. Licensee(s) shall be required to file an application in each ensuing year. The applicant shall be required to comply with all rules and regulations for the granting of licenses.

*Section 4: Estimation of gross receipts; filing of returns.*

- (a) All occupation taxes levied by this Article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the City and the taxpayer, those businesses subject to the occupational tax shall on or before February 1 file with the Finance Department a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. For continuing businesses, the return required on or before February 1 showing the business' preceding year's actual gross receipts and number of employees shall also be used to adjust the estimated return for the same period. Differences will be billed or credited to the business' occupational tax billing as required. Should a business not continue or terminate during the year, such business shall notify the Finance Department's business occupation tax section and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.

(c) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this Article.

(d) Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. The general penalty for continuing violations of this Code shall not apply to violations of this chapter by lawyers.

~~(d)~~(e) The City shall not require the payment of more than one (1) occupational tax for each location that a business or practitioner shall have nor shall the City require a business to pay an occupational tax for more than one hundred (100) percent of the business' gross receipts.

~~(e)~~(f) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the City of Dunwoody based upon gross receipts derived from transactions with respect to property located within the City. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. § 43-40-1 without further licensing or taxing other than the state licenses issued pursuant to Chapter 40 of Title 43 of the O.C.G.A.

~~(f)~~(g) For out of state businesses with no location in Georgia, occupation taxes include the gross receipts of business as defined in this Article titled "paying occupation tax of business with no location in Georgia."

~~(g)~~(h) For purposes of this section, prima facie evidence of gross receipts generated during any period shall be a copy of the business' federal income tax return or an affidavit from the business' accounting firm.

#### *Section 5: Administrative and regulatory fees*

(a) A non-prorated, non refundable administrative fee shall be required on all business occupation tax accounts for the initial start up, renewal or reopening of those accounts.

(b) A regulatory fee will be imposed on those applicable businesses listed under O.C.G.A. § 48-13-9(b) that the City deems necessary to regulate.

*Section 6: Renewal returns and applications; due date; penalty for late payment.*

- (a) On or before February 1 of each year, businesses liable for occupation taxes levied under this Article for the year shall file with the Finance Department's business occupation tax section, on a form furnished by the Finance Department, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.
- (b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational tax due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes and administrative fees within one hundred twenty (120) days after January 1 shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fees due and interest as provided by State Law. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.
- (c) If any person or business whose duty it is to obtain a registration in the City begins to transact or offers to transact any kind of business after said registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided by State Law and penalties under the provisions of City code.
- (d) The Finance Department may issue an execution for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this Article.
- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. The general penalty for continuing violations of this Code shall not apply to violations of this chapter by lawyers.

*Section 7: Paying occupation tax of business with no location in Georgia*

Registration and the assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions and occupations with no location or office in the State of Georgia if the business' largest dollar volume of business in Georgia is in the City of Dunwoody, Georgia, and the business or practitioner:

- (1) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of the City of Dunwoody, Georgia, for the purpose of soliciting business or serving customers or clients; or
- (2) Owns personal or real property which generates income and which is located within the City of Dunwoody, Georgia.

#### *Section 8: Professional Occupation Tax*

- (a) Notwithstanding any other provision of this Article, practitioners of professions as described in O.C.G.A. § 48-13-9(c)(I) through (I8) shall elect as their entire occupation tax one (1) of the following:
  - (1) The occupation tax based-on number of employees and gross receipts combined with profitability ratios as set forth in this Article; or
  - (2) \$400.00 for the year 2009 and subsequent years, but a practitioner paying according to this shall not be required to provide information relating to the gross receipts of such practitioner.
- (b) Any practitioner whose office is maintained by and who is employed in practice exclusively by instrumentalities of the United States, the State, a municipality or county of the State, shall not be required to register or pay an occupation tax for that practice.

#### *Section 9: Evidence of state registration required if applicable; City and State registration to be displayed*

- (a) Each person who is licensed by the Secretary of State pursuant to Title 43 of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the City registration may be issued.
- (b) Each person who is licensed by the State shall post the state license next to the City registration in a conspicuous place in the licensee's place of business and shall keep both the state license and the City registration there at all times while valid.
- (c) Any transient or nonresident person doing business within the City shall carry their occupational tax receipt either upon such person or in any vehicle or other conveyance which



is used in such business, and such person shall exhibit it to any authorized enforcement officer of the City when so requested.

#### *Section 10: Change of location*

Any person moving from one (1) location to another shall notify the Finance Department of this move and shall submit the new address in writing on a form provided by the Finance Department prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms to the zoning regulations of the City.

#### *Section 11: Transferability*

Occupational receipts shall not be transferable and a transfer of ownership shall be considered in the same light as the termination of the business and the establishment of a new business. Filing a new registration application and payment of applicable fees and taxes shall be required of the new owner of the business.

#### *Section 12: Evidence of qualification required if applicable*

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of City registration, show evidence of such qualification.

#### *Section 13: Inspections of books and records; audits; confidential information*

- (a) The Finance Department through its officers, agents, employees or representatives shall have the right to inspect the books or records of any business for which returns have been made and upon demand of the Finance Department such books or records shall be submitted for inspection by a representative or agent of the City within thirty (30) days. Independent auditors or bookkeepers employed by the City shall be classified as agents for the purposes of this Article. Failure of submission of such books and records within thirty (30) days shall be grounds for revocation of the occupation tax registration currently existing in the City. If it is determined that a deficiency exists as a result of under reporting, additional payment of occupation taxes required to be paid under this Article shall be assessed the interest as provided by State Law and penalties provided for by City code.
- (b) Except as provided in paragraph (c) of this section, information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure under Article 4 of Chapter 18 of Title 50 of the O.C.G.A.
- (c) Information provided to the City by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the governing authority of another local government

for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.

- (d) Nothing herein shall be construed to prohibit the publication by the City of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

*Section 14: Business classifications for determining tax levy*

- (a) For the purpose of this Article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business as defined in the Standard Industrial Classification Manual, Office of Management and Budget; and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The Finance Department shall review assignment of businesses to profitability classes on a biannual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.
- (b) Classifications by business profitability to be established by the City Council are incorporated herein by reference and adopted for use in the application of this Article. All separate businesses engaged in more than one (1) business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt as defined by this Article shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.
- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees returned to the City to the business' profitability classification established for each business type. The gross receipts tax shall include a flat rate of \$50.00 for the first \$20,000.00 of gross revenue, and a fee per employee. Gross revenues above \$20,000.00 are taxed using a fee class table based on profitability.
- (d) A copy of business classifications shall be maintained in the office of the City Clerk and shall be available for inspection by all interested persons.

*Section 15: Casual and isolated transactions*

Nothing in this Article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions, where they involve personal assets and are not the principal occupation of the individual, to pay occupational tax therefor. Street vendor, transient vendor or flea market vendor activities shall not be considered to be casual and isolated business transactions and shall be required to comply with the provisions of this Article.

*Section 16: Exemption for disabled veterans, disabled indigent persons, certain organizations*

- (a) Persons who qualify for a state veteran's or disabled indigent person's license shall be eligible for exemption from the City occupational tax fee. Any such person claiming an

exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the Finance Department.

- (b) Organizations which are exempt from federal income taxation under section 501(c)(3) or section 501(c)(4) of the United States Internal Revenue Code shall be eligible for exemption from the City occupational tax. Any such organization claiming an exemption shall provide to the Finance Department a federal tax exemption letter showing the code section under which an exemption is claimed. However, with respect to any activity for which an organization otherwise entitled to an exemption under this section shall be liable for federal income tax on unrelated business income or shall be deemed to be a feeder organization under the United States Internal Revenue Code, the exemption from payment of occupational taxes shall not be available.
- (c) Notwithstanding the exemption from payment of City occupation taxes, an exempt person or business shall comply with the same laws and regulations as are required of other registered businesses.

#### *Section 17: Special classification*

- (a) Registration and occupational tax payment is required from any satellite subscription television system. Satellite subscription television system means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one (1) or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non owned property lines and does not cross City right-of-way. The provisions of this paragraph shall not apply to any person that is franchised by the City Council to own and operate a cable system.
- (b) Registration and occupational tax payment is required from any broadcast subscription television system. Broadcast subscription television system means services provided to subscribers for sale where the provider of the services transmits premium programming from one (1) or multiple sources by transmitting or retransmitting programs to the public.

#### *Section 18: Denial, revocation or suspension*

- (a) An occupation tax certificate may be denied, suspended or revoked upon one or more of the following grounds:
  - (1) The applicant or certificate holder is guilty of fraud in the operation of the business or occupation he/she practices or fraud or deceit in being licensed to practice in that area;
  - (2) The applicant or certificate holder is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;

- (3) The applicant or certificate holder is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent he/she is unable to perform his or her duties under the business or occupation;
  - (4) The applicant or certificate holder is guilty of fraudulent, false, misleading, or deceptive advertising or practices;
  - (5) The applicant or certificate holder has been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in Title 16, Chapter 6 of the Official Code of Georgia Annotated, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five (5) years immediately prior to the filing of the application. If after having been granted a certificate, the applicant pleads guilty, is convicted of, or enters a plea of nolo contendere to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
  - (6) The original application or renewal thereof, contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
  - (7) The business or establishment is not authorized to operate within the City of Dunwoody, or within the zoning district within which it is located, or is otherwise not in conformity with locational requirements of any of the City's ordinances.
  - (8) The business or establishment is a threat or nuisance to public health, safety or welfare;
  - (9) The business or establishment has been found by a court of law to have been operating unlawfully;
  - (10) Any other violation of this Article; or
  - (11) Violation of another statute, ordinance, rule, or regulation that governs the operation of the business in question
- (b) Within forty-five (45) days of the filing of a completed application, the Finance Department shall either issue an occupation tax certificate to the applicant or issue a written notice of intent to deny an occupation tax certificate for one or more reasons set forth in subsection (a)(1)-(a)(11) above.
- (c) The Tax Collector shall administer and enforce the provisions of this Article. Should an aggrieved person or entity desire to appeal a decision under this Article, the following procedure shall apply: a notice of appeal must be filed with the Director of Finance within fifteen (15) calendar days after receipt of the decision. The notice of appeal shall be in the form of a letter, and shall clearly identify all of the objections or exceptions taken to the decision of the Finance Director. The notice of appeal shall also contain an

address for receipt of future notices. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal is lost.

- (d) Upon receipt of a timely and proper notice of appeal, the Director of Finance shall notify the appellant, in writing, of the date, time and place where a hearing will be held. The notice shall specify the time, place and date, not less than ten (10) days nor more than thirty (30) days after the date the notice is issued, on which the Mayor and City Council, or such hearing officer or board as the Mayor and Council may designate, shall conduct a hearing on Tax Collector's written notice of intent to deny, suspend, or revoke the occupation tax certificate. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any adverse witnesses. The Tax Collector shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the occupation tax certificate.
- (e) The hearing shall take no longer than two (2) days, unless continued or extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Mayor and City Council, or such hearing officer or board as the Mayor and Council may designate, shall issue a written decision, including specific reasons for the decision pursuant to this Article, to the respondent within five (5) days after the hearing. If the decision is to deny, suspend, or revoke an occupation tax certificate, the decision shall become final unless the applicant or certificate holder files an appeal by petition for writ of certiorari to the Superior Court of DeKalb County within thirty (30) days of the date of the decision. If the decision concludes that no grounds exist for denial, suspension, or revocation of the occupation tax certificate, the City Tax Collector shall, within three (3) business days of the issuance of the decision, issue the occupation tax certificate to the applicant.

#### *Section 19: Proration of Fee*

No license fee shall be prorated.

#### *Section 20: Promulgation of rules and regulations*

The Finance Department shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this Article or other laws of the City and the State, or the constitution of this State or the constitution of the United States, for the administration and enforcement of the provisions of this Article and the collection of the occupational tax.

#### *Section 21: Intent of Article*

It is the intent of the Article to impose the taxes set forth in this Article upon all businesses and practitioners operating in the City of Dunwoody consistent with the requirements of the Constitution and laws of the State of Georgia. In the event that the fees imposed hereby shall not be authorized on any business and practitioner or taxes and fees shall be in excess of the

maximum amount authorized by law, such taxes and fees shall be imposed only to the extent authorized by law.

#### *Section 22: Severability*

The invalidity of any part of this Article shall not affect the validity of the remaining portions hereof. In the event that this Article may not be enforced against any class of business mentioned herein, such inability to enforce the same shall not affect its validity against other businesses specified herein.

#### *Section 23: Amendment of Article*

This Article may be amended so as to increase the occupation tax on any business or practitioner only after the conduct of at least one public hearing pertaining thereto.

#### *Section 24: Effective Date*

- (a) This Article shall become effective upon adoption.
- (b) Annual registration and payment shall be conducted in accordance with the terms of this Article.

#### *Section 25: Repealer, Exceptions*

All ordinances providing for occupation taxes and administrative fees in conflict with this Article are hereby repealed, provided, however, that nothing herein shall affect any ordinance providing for regulation of taxicabs or shall affect any resolution providing for the regulation of the sale of any alcoholic beverages and taxes imposed thereon, or any mixed drink tax or any hotel-motel tax, such taxes being due and payable in addition to the taxes and fees imposed hereby.

### **Article 2: Pawn Shops, Pawn Brokers**

#### *Section 1: Applicability of article provisions.*

Every person, whether a licensed junk dealer or pawnbroker, or any other secondhand dealer, who, exclusively or as incidental to or in connection with other business, purchases, sells or acquires in trade used or secondhand jewelry, flat silver, gold, and silver objects of every kind and description, including watches and clocks, any of which is made in whole or in part of gold, silver, platinum, or other precious metals; diamonds, emeralds, rubies, or other precious stones; pistols or guns; musical instruments, bicycles or accessories shall, for the purpose of this Article, be a secondhand dealer. Any person who shall purchase any Article of the kinds herein described from any person other than a bona fide dealer in those Articles shall, for the purpose of making the reports required herein, also be a secondhand dealer and subject to all the provisions of this Article relating to those records and reports.

*Section 2: Recordkeeping.*

- (a) *Contents of record book.* All secondhand dealers shall keep a book wherein shall be entered an accurate description of all property of the kinds specified in Section 1 of this Article which they acquire by purchase of trade, and the name, address, estimated age, weight, and height of the person from whom purchased or acquired and the date and hour of the purchase. These entries shall be made as soon as possible after the transaction is had, but in no case more than one (1) hour thereafter.
- (b) *Inspection.* This record shall at all times be subject to inspection and examination by the Police Department.

*Section 3: Entries in Record Book to be Numbered Serially; Property to be Tagged with Corresponding Number.*

Every entry required to be made in the secondhand dealer's book required by Section 2 of this Article shall be numbered serially, and the property described in the entry shall have attached to it a tag bearing the same serial number.

*Section 4: Acquiring Articles With Serial Number Mutilated or Altered.*

It shall be unlawful for any secondhand dealer to purchase or acquire in trade any watch, clock, pistol, gun, automobile tire, or battery, or any other Article commonly branded with a serial number, upon which the number has been mutilated or altered.

*Section 5: Daily Reports to Police; Form and Contents.*

Every secondhand dealer identified in Section 1 of this Article shall make a daily report in writing to the Chief of Police in such form as may be prescribed by him, of all property purchased or acquired by him during the twenty-four (24) hours ending at 12:00 midnight on the date of the report.

*Section 6: Examination and Inspection of Articles by Police; Segregation of Suspicious Articles.*

All property purchased or acquired by a secondhand dealer shall at all times be subject to examination and inspection by the Police Department. If, upon the inspection, a police officer shall have reasonable cause to believe that any of the property is stolen, he shall segregate it. It shall thereafter be unlawful for the person in possession of the property to dispose of it, or in any manner mutilate, melt, or disfigure it, until fifteen (15) days have elapsed from the date of the inspection.

*Section 7: Property Not to be Disposed of for Fifteen (15) Days After Acquisition.*

All property purchased or acquired by a secondhand dealer shall be held for not less than fifteen (15) days.

*Section 8: Dealing with Minors.*

It shall be unlawful for any secondhand dealer to buy or receive any property of the kinds described in Section 1 of this Article from any person under the age of eighteen (18) years, provided that any secondhand dealer taking from the seller a statement in writing that the seller is of age will not be held subject to the provisions of this section, if the appearance of the seller is such as to make it uncertain that he is not eighteen (18) years of age.

**Article 3: Door to Door Salesmen**

*Section 1: Definitions.*

For the purpose of this Chapter, the following words as used herein shall be considered to have the meaning herein ascribed thereto:

- (a) “*Soliciting*” shall mean and include any one or more of the following activities:
  - (i) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or
  - (ii) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or publication; or
  - (iii) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.
- (b) “*Residence*” shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.
- (c) “*Licensed solicitor*” shall mean and include any person who has obtained a valid permit as hereinafter provided, which permit is in the possession of the solicitor on his or her person while engaged in soliciting.

*Section 2: Permit Required.*

- (a) It shall be unlawful for any person, firm or corporation to engage in the business of soliciting, calling on residences door-to-door without first having obtained a permit in accordance with the provisions contained in this Chapter.
- (b) The requirement of Subsection (a) above is meant to apply to door-to-door solicitations for commercial transactions for profit only.



- (i) It is not meant to regulate solicitation for charitable, political, or other nonprofit purposes provided that all sales proceeds are the property of and used by the nonprofit organization.
- (ii) It does not apply to officers or employees of the city, county, state, or federal governments, or any subdivision thereof, when on official business.
- (c) Each person shall at all times while soliciting in the City of Dunwoody carry upon his or her person the permit so issued and the same shall be exhibited by such solicitor whenever he is requested to do so by any police officer or by any person solicited.
- (d) Each permit issued shall contain the name of the solicitor, the name and address of the person, firm or corporation or association whom the solicitor is employed by or represents, a photograph of the solicitor, and physical description. Such photograph shall be provided by the solicitor and shall be at least two (2) inches by two (2) inches in size.
- (e) The permit shall state the expiration date thereof. In no event shall a permit be valid for more than six (6) months.

*Section 3: Permit Applications.*

- (a) Application for a permit shall be made upon a form provided by the City. The City shall have applications available on request. The applicant shall truthfully state in full the information requested on the application, to wit:
  - (i) Name and address of present place of residence and length of residence at such address; also business address if other than present address;
  - (ii) Address of place of residence during the past three (3) years if other than present address;
  - (iii) Age of applicant;
  - (iv) Physical description of the applicant;
  - (v) Name and address of the person, firm, or corporation or association whom the applicant is employed by or represents; and the length of time of such employment or representation;
  - (vi) Name and address of employer during the past three (3) years if other than the present employer;
  - (vii) Description sufficient for identification of the subject matter of the soliciting in which the applicant will engage;
  - (viii) Period of time for which the certificate is applied;

- (ix) Proposed route, including streets to be included on each day, which applicant intends to follow;
  - (x) The date, or approximate date, of the latest previous application for permit under this Chapter, if any;
  - (xi) Whether the applicant has ever been convicted of a felony, a crime of moral turpitude, or any other violation of any state or federal law;
  - (xii) Names of magazines, books, or journals to be sold;
  - (xiii) Names of the three (3) most recent communities where the applicant has solicited house to house;
  - (xiv) Proposed method of operation;
  - (xv) Description and license plate number of vehicle(s) intended to be operated by applicant;
  - (xvi) Signature of applicant; and
  - (xvii) Social security number of applicant.
- (b) All statements made by the applicant upon the application or in connection therewith shall be under oath.
  - (c) The applicant shall submit to fingerprinting and background investigation by the City Public Safety Department in connection with the application for the permit.
  - (d) The City Manager shall cause to be kept in his/her office or designee office an accurate record of every application received and acted upon together with all other information and data pertaining thereto and all permits issued under the provisions of this Chapter, and of the denial of applications. Applications for permits shall be numbered in consecutive order as filed, and every permit issued shall be identified with the duplicate number of the application upon which it was issued.
  - (e) No permit shall be issued to any person who has been convicted of a felony or crime of moral turpitude within five (5) years of the date of the application; nor to any person who has been convicted of a violation of any of the provisions of this Chapter; nor to any person whose permit issued hereunder has previously been revoked as herein provided.
  - (f) The fee for a permit shall be valid for a six (6) month period.

#### *Section 4: Permit Revocation*

- (a) Any permit issued hereunder shall be revoked by the City Manager if the holder of the permit is convicted of a violation of any of the provisions of this Chapter or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a permit under the terms of this Chapter.
- (b) Immediately upon such revocation, written notice thereof shall be given to the holder of the permit in person or by certified United States mail addressed to his or her residence address set forth in the application.
- (c) Immediately upon the giving of such notice the permit shall become null and void and must be turned in to the City Manager's office.

*Section 5: Routes.*

To the extent practical, each solicitor shall identify the streets and routes which he will follow on each day he is engaged in the business of soliciting. If changes in routes are made, then such changes must be immediately reported to the City Manager's office.

*Section 6: Prohibitions*

- (a) Any licensed solicitor who shall be guilty of any fraud, cheating, or misrepresentation, whether himself or through an employee, while acting as a solicitor in the City, shall be deemed guilty of a violation of this Chapter.
- (b) It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined if the occupant of said residence has made it clear, by written sign or otherwise, that solicitors are not invited.
- (c) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.
- (d) Times Allowed.
  - (i) It is hereby declared to be unlawful and shall constitute a nuisance for any person, whether licensed under this Chapter or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined, prior to 10:00 a.m. or after 6:30 p.m., Eastern Standard Time, or before 10:00 a.m. or after 7:00 p.m. Eastern Daylight Saving Time, Monday through Saturday, or at any time on Sunday, or on a state or national holiday.

- (ii) Solicitations for political purposes shall not occur prior to 10:00 a.m. or after 7:00 p.m., Eastern Standard Time, or before 10:00 a.m. or after 7:00 p.m. Eastern Daylight Saving Time.

#### *Section 7: Penalties.*

Any person violating any of the provisions of this Chapter shall, upon conviction thereof, be subject to a fine not to exceed the maximum fine allowed by state law for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

### **Article 4: Panhandling**

#### *Section 1: Definitions*

As used in this Article:

- (a) “*Solicit*” shall mean to request an immediate donation of money or other thing of value from another person, regardless of the solicitor’s purpose or intended use of the money or other thing of value, including employment, business or contributions or to request the sale of goods or services. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.
- (b) “*Public area*” shall mean an area to which the public or a substantial group of persons has access, including but not limited to alleys, bridges, buildings, driveways, parking lots, parks, play grounds, plazas, sidewalks, and streets that are open to the general public.
- (c) “*Aggressive Panhandling*” shall mean and include:
  - (i) Intentionally or recklessly making any physical contact with or touching another person or his vehicle in the course of the solicitation without the person’s consent;
  - (ii) Following the person being solicited, if that conduct is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person’s possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

- (iii) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (iv) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a permit issued pursuant to Article 4, Section 3 of this Chapter shall not constitute obstruction of pedestrian or vehicular traffic;
- (v) Intentionally or recklessly using obscene or abusive language or gestures intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or words intended to, or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (vi) Approaching the person being solicited in a manner that is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

*Section 2: Prohibitions.*

- (a) It shall be unlawful for any person, firm, organization, or corporation to aggressively panhandle or solicit funds for the sole benefit of the solicitor within any public area in the City of Dunwoody, or:
  - (i) In any public transportation vehicle, or public transportation station or stop;
  - (ii) Within fifteen (15) feet of any entrance or exit of any bank or check cashing business or within fifteen (15) feet of any automated teller machine during the hours of operation of such bank, automated teller machine or check cashing business without the consent of the owner or other person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
  - (iii) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property; or

- (iv) From any operator of a motor vehicle that is in traffic on a public street, whether in exchange for cleaning the vehicle's windows, or for blocking, occupying, or reserving a public parking space; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle.
- (b) Unauthorized solicitation shall constitute an ordinance violation.
- (c) Aggressive panhandling shall constitute an aggravated ordinance violation.

### *Section 3: Applicability*

This Chapter regulates the time, place and manner of solicitations and shall not apply to any persons exercising their clearly established constitutional right to picket, protest or engage in other constitutionally protected activity.

## **Article 5: Taxicabs**

### *Section 1: Operation of taxicab to be in compliance with Article.*

No person, firm, or corporation shall operate a taxicab in the City except in accordance with the terms and provisions of this Article.

### *Section 2: Definitions.*

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (a) “*Operator*” means any person, firm, or corporation in the business of transporting passengers in taxicabs.
- (b) “*Taxicab*” means any passenger-carrying vehicle used in the business of transporting passengers for hire which does not have fixed termini, including but not limited to, any unmarked automobiles used in the business of transporting passengers for hire by contract or requested special services that do not have fixed termini.
- (c) “*Taximeter*” means a device that automatically calculates, at a predetermined rate, and indicates the charge for hire of a vehicle. Taxicabs operating with non-electronic taximeters shall be furnished with a sign, approved by the City of Dunwoody Code Enforcement, immediately adjacent to the taximeter which explains the way the fare shall be calculated if the taximeter reaches its highest fare before the passenger's destination is

reached. This sign shall be pointed out to the passenger by the driver at the beginning of the trip.

- (d) *“Line Jumping”* Taxicabs shall be placed on stands only from the rear and shall be moved forward and to the front of the stand immediately as space becomes available by the departure or movement of preceding taxicabs. Violation of this rule constitutes line jumping and shall be grounds for suspension of a taxi driver’s permit.

*Section 3: Operations deemed to be doing business in the City.*

A taxicab shall be deemed to be doing business in the City when its original terminus, that is to say, the place from which it operated and is subject to calls, shall be located in the City.

*Section 4: License fees for annual operation and driver’s permit.*

License fees are hereby levied per annum for each taxicab maintained or operated, and per annum for each driver’s permit. The license fees are established from time to time by Resolution of the Mayor and City Council. The business occupation tax shall be in accordance with the current business occupation tax ordinance. The following criteria must be met to maintain a taxi cab license:

1. Establishment and maintenance of an office in a commercially zoned area of the corporate boundaries of the City of Dunwoody.
2. Submission of a copy of current lease or proof of ownership of office space.
3. Establishment and maintenance of a publicly listed telephone number.
4. Maintain the name and home address of each driver affiliated with the company.
5. Maintain off-street parking lot capable of accommodating all company vehicles.
6. Maintain a file for each vehicle containing proof of current instruments.
7. Possess a valid six (6) month auto insurance policy.

*Section 5: Permits for operation.*

- (a) *Required.* No person, firm, or corporation shall operate a taxicab or conduct the business of operating taxicabs in the City of Dunwoody until the person, firm, or corporation has first applied for and obtained an occupation tax certificate and a taxicab license. The applications for the occupation tax certificate and license shall be made to the City of Dunwoody upon forms provided for that purpose. The license for vehicles shall be issued by the City of Dunwoody. Permits for drivers will be issued by the City of Dunwoody Police Department, or its designee.

No person shall operate a taxicab in the corporate boundaries of the City of Dunwoody until the person has first applied for and obtained a driver's permit. Permits for drivers will be issued by the City of Dunwoody Police Department, or its designee.

- (b) *Description of business.* The application shall contain, among other things, a detailed description of the equipment to be used in the business and the name of the operators thereof, the point of original terminus of the business, and the address and telephone number of the office or call station from which the business is operated.
- (c) *Indemnity insurance.* No taxicab license to operate taxicabs shall be issued or continued in operation unless the holder thereof shall file with the business tax division a policy of indemnity insurance in some indemnity insurance company authorized to do business in this state, which policy shall have limits equal to or in excess of the following sums for each taxicab operated:
  - (i) For bodily injury to each person, fifty thousand dollars (\$50,000.00);
  - (ii) For bodily injury to all persons sustained in any one accident, fifty thousand dollars (\$50,000.00); and
  - (iii) For property damage and liability for baggage of passengers, twenty-five thousand dollars (\$25,000.00).

The policy shall be conditioned to protect the public against injury or damage proximately caused by the negligence of the holder of such permit. Additional drivers or new drivers hired after issuance of the occupation tax certificate shall be covered by a rider to the policy prior to the issuance of a driver's permit.

- (d) *Ages of Vehicles.* The operator is responsible for ensuring that each taxicab used in active business is no more than six (6) years old. By December of each year, automobiles of a model year seven (7) years prior to that year must be replaced.
- (e) *Annual renewal.* All fees for taxicab licenses and taxi drivers' permits are due no later than June 30 of each year.

#### *Section 6: Certificate of inspection.*

- (a) A certificate of inspection completed on forms provided by the City of Dunwoody and issued by an ASE Certified mechanic shall be located inside the taxicab at all times certifying that the taxicab and equipment therein are safe and in compliance with applicable law. This certificate must be renewed every ninety (90) days, and the operator of any taxicab business shall be required to keep his/her taxicab and equipment therein in safe condition conforming to all laws under penalty of having his/her permit to conduct a taxicab business suspended or revoked.
- (b) Each taxicab must produce proof of taximeter inspection and calibration for issuance and



renewal of taxi decal.

- (c) The City of Dunwoody Police Department, or its designee, may conduct random inspections to ensure the safety and welfare of the public.

*Section 7: Additional Equipment.*

The operator of a taxi business shall register with the City of Dunwoody each additional piece of equipment put in use, and same shall be subject to inspection and registration as herein provided.

*Section 8: Drivers; Qualifications.*

It shall be the duty of all operators to file with the City of Dunwoody the names and addresses, age and physical description of the persons employed as drivers. All drivers shall hold licenses from the State Department of Public Safety as drivers of vehicles for hire, and drivers' permits issued by the City Police Department. No person shall be employed or shall drive a taxicab who has, within the past five (5) years, been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in Title 16, Chapter 6 of the Official Code of Georgia Annotated, or to the offense of driving under the influence of drugs and/or alcohol, or to any open container violations, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, violence, or the violation of a spirituous, vinous, or malt beverage statute or if the driver has been convicted of an offense of causing death by vehicle. No driver can be issued a taxi driver's permit if the driver has received three (3) or more moving violations in the preceding twelve (12) month period.

*Section 9: Taxi Stands; Parking.*

Operators and drivers of taxicabs shall not park taxicabs in any congested area as defined by the regulations of the City Council at any place other than the place or places designated as "taxi stand". The parking of taxicabs shall be subject at all times to the direction of police officers should such direction be necessary or desirable for the relief of an emergency traffic condition.

*Section 10: Information to be displayed.*

- (a) Information to be displayed inside the taxicab at all times:

The operator is responsible for ensuring that each taxicab used in active business shall have posted in a conspicuous place, on the inside thereof, a map or street guide of the City of Dunwoody, the name and photograph of the driver of the taxicab, and a schedule of fares. Each taxicab used in active business shall also bear on the outside thereof a numbered decal to be furnished by the City of Dunwoody.

- (b) Information to be displayed outside the taxicab at all times:

The operator is responsible for ensuring that each taxicab used in active business bears on the outside thereof a numbered decal to be furnished by the City, the name of the

company and business telephone number which must be permanently affixed to the taxicab, a dome light on the roof which must be at least six (6) inches in height permanently affixed to the roof and bear the term “taxi” or the company name.

*Section 11: Operators responsible for violations by drivers.*

To the extent provided by law, operators are responsible for violations of this Article by their taxicab drivers whether such drivers are direct employees or independent contractors.

*Section 12: Notice of denial of license.*

In the event that an application is denied, the City of Dunwoody shall provide the applicant with written notice of the denial of the taxicab license. The notice of denial shall include the grounds for denial.

*Section 13: Suspension or revocation of license.*

- (a) No license issued hereunder may be transferred.
- (b) Each license granted hereunder shall be subject to suspension or revocation for violation of any rule or regulation of the City now in force or hereafter adopted.
- (c) Whenever the City Manager determines there is cause to suspend or revoke the license issued hereunder, the City Manager’s Office shall give the licensee ten (10) day written notice of intention to suspend or revoke the license. A hearing will be scheduled wherein the licensee may present a defense to the suspension or revocation before the City Council or such board as the City Council may designate. The ten (10) day written notice shall include the time, place, and purpose of such hearing, and a statement of the charges upon which such hearing will be held. After the hearing, the Council or designated Board may suspend or revoke the license issued hereunder if any of the grounds set forth below exist. A license issued under this Article may be suspended or revoked by the City Council or their designee and a driver’s permit may be suspended or revoked by the City of Dunwoody Police Department upon one or more of the following grounds:
  - (i) The original application contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
  - (ii) For failure to pay all fees, taxes or other charges imposed by the provisions of this Article;
  - (iii) For failure to maintain all of the general qualifications applicable to the initial issuance of a license or permit under this Article;
  - (iv) Having four or more moving traffic violations in any twelve (12) month period;

- (v) Refusing to accept a client solely on the basis of race, color, national origin, religious belief, or sex. Operators and drivers shall not refuse to accept a client unless the client is obviously intoxicated or dangerous;
  - (vi) Allowing the required insurance coverage to lapse or allowing a driver to operate in the City in violation of the provisions of this Article;
  - (vii) The establishment or driver is a threat or nuisance to public health, safety or welfare;
  - (viii) Not taking the most direct route; or
  - (ix) For violation of any part of this Article.
- (d) After the City Manager makes a recommendation to the Mayor and City Council to suspend or revoke a license issued hereunder, the Mayor and City Council, or such board as the Mayor and City Council may designate, will conduct a hearing to hear evidence relevant to the alleged violation.
- (i) At the hearing, the City Manager or his designate proceeds first and shall have ten (10) minutes to present all evidence and argument in support of the recommendation to suspend or revoke the license issued hereunder.
  - (ii) The Mayor and the City Council members or their designates will have the right to ask questions at any time.
  - (iii) After the City Manager makes his presentation, the licensee or the licensee's legal counsel, shall have ten (10) minutes to present evidence and argument as to why the license issued hereunder should not be suspended or revoked. The Mayor and City Council members or their designate will have the right to ask questions at any time.
  - (iv) After hearing all of the evidence and arguments of the parties, the Mayor and City Council will render a decision. The suspension or revocation of a taxicab license is final unless the licensee files a petition for writ of certiorari to the Superior Court of Dekalb County within thirty (30) days of the date of the decision.

*Section 14: No proration of license fee.*

No license fees shall be prorated. Taxi driver's permit fees shall not be prorated.

*Section 15: Repealer; exceptions.*

All resolutions providing for taxicab license fees and drivers permits in conflict with this Article are hereby repealed, provided, however, that nothing herein shall affect any resolution providing for occupation or business taxes.

*Section 16: Intent of Article; severability.*

It is the intent of this Article to regulate the operation of taxicab businesses as set forth in this Article upon all businesses operating in the corporate boundaries of the City of Dunwoody consistent with the requirements of the Constitution and laws of the State of Georgia. In the event that the regulations and/or fees imposed hereby shall not be authorized on any business and practitioner or regulation and/or fee shall be in excess of the maximum amount authorized by law, such regulation and/or fee shall be imposed only to the extent authorized by law. The invalidity of any part of this Article shall not affect the validity of the remaining portion hereof. In the event that this Article may not be enforced against any class of business mentioned herein, such inability to enforce the same shall not affect its validity against the other business specified herein.

*Section 17: Effective date.*

This Article shall become effective immediately upon its adoption by Mayor and City Council. Annual registration and payment shall be conducted in accordance with the terms of this Article.

**Article 6: Professional Bondsmen**

*Section 1: Definition – Professional Bondsman.*

Professional Bondsman means all persons who hold themselves out as signers or sureties of bail bonds for compensation, and who are licensed as provided in this Article.

*Section 2: Compliance.*

All professional bondsmen licensed through the City of Dunwoody must comply with the requirements of O.C.G.A. §17-6-50 and all related and pertinent sections of the Official Code of Georgia Annotated at all times when acting as bonding agents in the City of Dunwoody.

*Section 3: Surety Requirement.*

Prior to the issuance of a license, professional bondsmen shall post a surety or property bond with the City Clerk in an amount of at least \$50,000.00, and such bond shall be kept current at all times; or the professional bondsman may sign an agreement with the City providing for an escrow account in a financial institution designated as a city depository. Any such escrow account shall be not less than \$5000.00, and shall be 10% of that company's capacity for posting bonds. Upon acceptance of either the surety bond or the escrow account and payment of the administrative fee set forth from time to time by the City Council, the City shall issue a business license to the bonding company.

*Section 4: Nonappearance of principal.*

In the event of the nonappearance of the principal in the Municipal Court on the appointed date and time, the judge shall at the end of the court day, forfeit the bond and order an execution hearing. Procedures for forfeiture of bonds and judgment absolute set forth in O.C.G.A. §§17-6-70 through 17-6-72 shall be followed. In addition to the penalties set forth in State law, if the judgment absolute is entered, and payment is not made promptly to the City, the license of the

bail bondsman shall be suspended until such time as the judgment absolute is satisfied, or the defendant is returned to the custody of the court.

*Section 5: Cancellation of Bond.*

When the condition of the bond is satisfied or the forfeiture of the bond has been discharged or remitted, the judge shall make an order canceling the bond. Conviction or acquittal of the defendant shall satisfy the terms of the bond written by a bail bondsman.

*Section 6: Suspension of bail bond license.*

The City may deny, suspend, revoke or refuse to renew any bail bondsman's business license for any of the following causes:

- (i) For any violation of State statutes or City code.
- (ii) Material misstatement, misrepresentation or fraud in obtaining the license.
- (iii) Misappropriation, conversion or unlawful withholding of money belonging to others and received in the conduct of business under this license.
- (iv) Fraudulent or dishonest practices in the conduct of business under this license.
- (v) Failure to comply with the provisions of this Article.
- (vi) Failure to return collateral security to the principal who is entitled thereto.
- (vii) Failure to meet the obligations or standards set forth by the State of Georgia or the City of Dunwoody.

*Section 7: Return of license.*

Any professional bondsman who discontinues writing bail bonds during the period for which he/she is licensed shall notify the City Clerk and immediately return his/her license certificate.

*Section 8: Monthly reporting.*

All bondsmen licensed to do business in the City of Dunwoody shall provide the City Clerk with a list of all outstanding bonds posted with the City on a monthly basis.

*Section 9: Effective Date.*

This ordinance shall become effective upon signing.

**Article 7: Escort Services**

*Section 1: Intent of Article*

It is the intent of this Article to regulate the operation of escort and/or dating services operating in the City consistent with the requirements of the Constitution and laws of the State of Georgia.

*Section 2: Compliance*

No person shall conduct the business of an escort and/or dating service in the City without first meeting the requirements of this Article.

### *Section 3: Copy of Article*

Upon request, the City Manager or designee shall provide each applicant hereunder with a copy of this Article.

### *Section 4: Information Concerning Employees to be filed with the City Manager; Background Investigation Required*

- (a) All licensees under this Article must file with the City Manager or designee their home address, home telephone number, and place of employment. Changes thereto shall be filed with the City Manager or designee within ten (10) days from the date the change becomes effective.
- (b) All employees of the licensee must submit to a background investigation not less than fifteen (15) days prior to commencing work to allow for the investigation of the employee. The City Manager or designee shall provide the release form used to conduct the background investigation. After the release has been signed, the City Police Department shall investigate the police record of the employee.

### *Section 5: Records of Clients*

- (a) It shall be the duty of the licensee to maintain correct and accurate records of the name and address of the persons receiving escort and/or dating services and to provide the name of the employee providing such service. Records shall be kept for a minimum of three years. These records shall be subject to inspection at any time by the City Manager or designee and the City Police Department.
- (b) Failure to maintain records as required in this Section is a violation of this Article.

### *Section 6: License Required; Application; Information to be given*

- (a) Any person desiring to engage in the business, trade or profession of providing and/or arranging dates, escorts, or partners for persons shall, before engaging in such business, trade or profession, file an application with the City Manager or designee and obtain a license. This application shall be typewritten or legibly handwritten and shall contain the following as appendices:
  - (1) Name, home and business address of the applicant, date of birth, and sex.
  - (2) The applicant and employees must submit to a background investigation. The City Manager or designee shall provide the release form used to conduct the background investigation. After the release form has been signed and witnessed, the City Police Department shall investigate the police record of the employee. The release form must be signed at least fifteen (15) days prior to the issuance of a license to allow for the investigation of the applicant, and for the employee, at

least fifteen (15) days prior to the commencement of work to allow for the investigation of the employee.

- (3) The applicant must furnish a list of at least three character witnesses by name, address, and telephone number.
  - (4) Applicants shall furnish the name and address of any person having previously employed the applicant (in whatever position) for the last two years, if applicable.
  - (5) Applicants shall provide two recent identical photographs to the City Manager or designee. The photographs must have been taken within the past six (6) months and be a good likeness of the applicant. The photographs must be clear with a full front view of the applicant's face. Photographs may be in color or black and white and the size must be two inches by two inches (2" x 2"). The photograph must be taken without head covering unless a signed statement is submitted indicating that the head covering is worn daily for religious or medical reasons. Dark glasses may not be worn in the photographs unless a doctor's statement is submitted supporting the wearing of dark glasses for medical reasons. The City Manager or designee shall permanently affix one photograph to the permit.
- (b) The City Police department shall be notified within ten (10) days of any change of ownership and/or partners or employees.
- (c) A corporation, partnership, or other business entity being established for the purpose of engaging in the business, trade or profession of providing and/or arranging dates, escorts, or partners for persons, must also obtain a license.

#### *Section 7: Qualifications of Applicant*

No occupation tax certificate or license shall be granted pursuant to this Article to any person less than 18 years of age or any person who has been convicted, pled guilty or entered a plea of nolo contendere under any Federal, State or local law of any crime involving moral turpitude, illegal gambling, any felony, criminal trespass, public indecency, misdemeanor involving any type of sexual related crime, any theft or violence against person or property, any crime of possession, sale, or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under State law, criminal solicitation to commit any of these listed offenses, attempts to commit any of these listed offenses, for a period of ten (10) years prior to the date of application for such certificate and has been released from parole or probation.

#### *Section 8: Fees*

License fees and the background investigation fee shall be as established by the City Council. No license can be issued by the City Manager or designee until the applicant satisfies the qualifications listed in this article and pays all license fees.

#### *Section 9: Unlawful or Prohibited Activities*

No person less than 18 years of age shall be employed by an escort and/or dating service in any capacity.

*Section 10: Notice of Denial of License*

The City Manager or designee shall provide the applicant with written notice of the denial of the escort and/or dating service license. The notice of denial shall include the grounds for denial.

*Section 11: Suspension or Revocation of License*

- (a) No license issued hereunder may be transferred.
- (b) Each license granted hereunder shall be subject to suspension or revocation for violation of any rule or regulation of the City now in force or hereafter adopted.
- (c) Whenever the City Manager or designee determines there is cause to suspend or revoke the license issued hereunder, the City Manager or designee must give the licensee a ten (10) day written notice of intention to suspend or revoke the license. A hearing will be scheduled wherein the licensee may present a defense to the suspension or revocation before the Mayor and City Council or such board as the Mayor and City Council may designate. The ten-day written notice must include the time, place, and purpose of such hearing, and a statement of the charges upon which such hearing shall be held. After the hearing, the board may suspend or revoke the license issued hereunder for any of the grounds set forth in this subsection. A license may be suspended or revoked upon one or more of the following grounds:
  - (1) The licensee is engaged in the escort and/or dating service under a false or assumed name, or is impersonating another practitioner of a like or different name;
  - (2) The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to incapacitate such person to the extent that he is unable to perform his duties;
  - (3) The licensee is guilty of fraudulent, false, misleading, or deceptive advertising or practices;
  - (4) The licensee has been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in O.C.G.A. §§ 16-6-1--16-6-25, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five (5) years immediately prior to the filing of the application. If, after having been granted a license, the licensee is found not to be of good moral character, or pleads guilty or enters a plea of nolo contendere to any of the above offenses, said license shall be subject to suspension and/or revocation;



- (5) The application contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
  - (6) The licensee fails to pay all fees, taxes or other charges imposed by the provisions of this Article;
  - (7) The licensee fails to maintain all of the general qualifications applicable to initial issuance of a license under this Article;
  - (8) The licensee refuses to accept a client solely on the basis of race, color, national origin, religious belief, or sex. License holders shall not refuse to accept a client unless the client is obviously intoxicated or dangerous;
  - (9) The establishment is a threat or nuisance to public health, safety or welfare; or
  - (10) Any other violation of this Article.
- (d) After the City Manager or designee makes a recommendation to the City Council to suspend or revoke a license issued hereunder, the City Council, or such board as it may designate, will conduct a hearing to hear evidence relevant to the alleged violation.
- (1) At the hearing, the City Manager or his designee proceeds first and presents all evidence and argument in support of the recommendation to suspend or revoke the license issued hereunder.
  - (2) After the City Manager or his/her designee makes his presentation, the licensee or the licensee's legal counsel, will present evidence and argument as to why the license issued hereunder should not be suspended or revoked. The City Council or its designee will have the right to ask questions at any time.
  - (3) After hearing all of the evidence and arguments of the parties, the City Council will render a decision. The suspension or revocation of an escort or dating service license is final.

#### *Section 12: Proration of License Fee*

No license fees established in this Article shall be prorated.

### **Article 8: Massage Establishments and Spas**

#### *Section 1: Definitions*

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Massage apparatus* means any manual, mechanical, hydraulic, hydrokinetic, electric, or electronic device or instrument or any device or instrument operated by manual, mechanical, hydraulic, hydrokinetic or electric power, which is utilized by a massage therapist for the purpose of administering a massage.

*Massage establishment* means any business established for profit which employs or contracts with one or more massage therapists or operates or maintains for profit one or more massage apparatus, and which for good or valuable consideration, offers to the public facilities and personnel for the administration of massages. The term "massage establishment" shall not include hospitals or other professional health care establishments separately licensed as such by the state.

*Massage or massage therapy* means the manipulation and/or treatment of soft tissues of the body including, but not limited to, the use of effleurage, petrissage, pressure, friction, tapotement, kneading, vibration, range of motion stretches, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of oils, lotions, creams, salt glows, hydrotherapy, heliotherapy, hot packs, and cold packs. This term shall not include diagnosis, the prescribing of drugs or medicines, spinal or other joint manipulations, or any service or procedure for which a license to practice chiropractic, physical therapy, podiatry, or medicine is required by the State of Georgia.

*Massage therapist, practitioner, masseur or masseuse* means any person who for good or valuable consideration administers massage or massage therapy.

*Spa establishment* means any business established for profit that provides personal services such as body wraps, hydromineral wraps, body polish, body wash, baths and hydrotub soak.

## *Section 2: Penalty*

Except as otherwise stated in this Article, violations of this Article shall be punished as provided in Chapter 1 of the City of Dunwoody Code.

## *Section 3: Scope of Regulations*

- (a) All licenses issued under this Article shall constitute a mere privilege to conduct the business so authorized during the term of the certificate or permit only and subject to all terms and conditions imposed by this Code, as well as all applicable County and State law.
- (b) Nothing in this article shall be construed to regulate, prevent, or restrict in any manner:

- (1) Any physician, chiropractor, physical therapist, or similar professional licensed and regulated by or through the State of Georgia while engaged in the practice of said profession;
- (2) Any hospital or other professional health care establishment separately licensed as such by the State of Georgia; or
- (3) Any other individual or entity expressly exempted from local legislation by the laws of the State of Georgia.

#### *Section 4: License Required; Applications*

- (a) In addition to obtaining an occupation tax certificate as referenced in Article I of this Chapter, all persons, firms or corporations desiring to engage in the business, trade or profession of a massage establishment shall, before engaging in such trade, business or profession, make application for a license in the form and manner prescribed in this Section. The application shall include the information required on all license returns, along with the following additional information:
  - (1) No license for a massage establishment shall be granted to any person who is not a citizen of the United States or an alien lawfully admitted for permanent residence.
  - (2) A letter certifying as to the good moral character of the applicant, signed by three currently qualified and registered City voters of good moral character. Individuals signing such letter must provide their name and address.
  - (3) The applicant must hold and furnish a certified copy of a diploma or certificate of graduation from a state-certified school and accredited school of massage therapy. The diploma must be representative of the fact that the applicant attended a course of study of not less than 500 credit hours, consisting of a curriculum of anatomy, physical culture, physiology, basic massage theory, technique and clinical practice, approach to massage, allied modalities and disease awareness and other such subjects.
  - (4) The applicant must furnish a certified statement from the National Certification Board of Therapeutic Massage and Body Work evidencing passage by the applicant thereof of the exam for massage therapists administered by said board.
  - (5) If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited, associated with the operation of the massage therapy establishment.
  - (6) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said

corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in the County.

- (7) If the applicant is a corporation, such corporation must be chartered under the laws of the State of Georgia or authorized by the Georgia Secretary of State to do business in the State.
  - (8) If the applicant is an individual, the applicant must submit a copy of a valid driver's license or a valid I.D. card as reliable proof thereof. Additionally, if the applicant does not reside in the City, the applicant must provide the name and address for an agent who resides in the City authorized to receive legal process and notices under this Article on behalf of the applicant.
- (b) No person, firm or corporation or its officers shall be granted a license for a massage or spa establishment unless it shall appear to the satisfaction of the City Manager or designee that such person, partners in the firm, officers and directors of the corporation have not been convicted or plead guilty or entered a plea of nolo contendere under any Federal, State or local law of any crime involving illegal gambling, any felony, criminal trespass, public indecency, disorderly conduct, misdemeanor involving any type of sexually related crime, any theft or violence against person or property, any crime of possession, sale, or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under state law, criminal solicitation to commit any of these listed offenses, or attempts to commit any of these listed offenses, for a period of ten (10) years prior to the date of application for such certificate and has been released from any parole or probation. No person, partner or officer less than 18 years of age shall be granted a license for a massage or spa establishment.

#### *Section 5: Regulatory Fee; Expiration*

- (a) There shall be an annual regulatory fee for each massage and spa establishment licensed within the City in the amount established by the Mayor and City Council. The regulatory fee shall be paid with the license application.
- (b) All licenses granted hereunder shall expire on December 31 of each year. Each subsequent application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.
- (c) All licenses granted hereunder shall be for the calendar year and the full regulatory fee must be paid for a license application filed prior to July 1 of the license year. One-half of a full regulatory fee shall be paid for a license application filed after July 1 of the license year.
- (d) Any person applying hereunder who shall pay the required fee, or any portion thereof, after January 1 shall, in addition to said annual fee and late charges, pay simple interest

on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.

#### *Section 6: Work Permits Required*

Prior to the issuance of a license, the on-premises owners, managers and employees desiring to engage in the business, trade or profession of massage therapy shall be required to obtain a work permit.

#### *Section 7: General Operating Provisions*

- (a) It shall be the duty of all persons holding a license under this Article to file the name of all employees, their home address, home telephone number and place of employment with the City Manager or his designee. The holder of a license issued under the provisions of this Article must additionally report changes in the list of employees with the names and require supplement information for new employees to be filed with the City Manager or his designee within ten (10) days from the date of such change.
- (b) It shall be the duty of any person granted a license under this Article to maintain correct and accurate records of the name and address of the persons receiving treatment at such establishment, the type of treatment administered, and the name of the person at the establishment administering the treatment. The records shall be subject to inspection at any time by the City Manager or his designee, or the Chief of Police or his designee.
- (c) The establishment shall have an owner, manager, or supervisor on the premises at all hours the establishment offers massage therapy. If during an inspection there is no owner, manager, or supervisor on the premises, the establishment must cease operations and close to the public until an owner, manager or supervisor is on the premises.
- (d) Records required to be maintained under this Article shall be kept for a minimum of two years beyond the expiration date of a license. Records shall be made available to the City Manager or his designee, during business hours, at the certificate holder's business location within the City, within ten (10) business days of any such request.
- (e) The establishment shall be subject to inspection at any time during business hours by the City Manager or his designee and by the Chief of Police or his designee to ensure compliance with this Article.
- (f) All employees, massage therapists and other persons on the premises, with the exception of the customers, shall be completely clothed at all times when administering a massage. For the purposes of this Article, the term "completely clothed" shall mean having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body except the arms and neck, and having on the lower body appropriate undergarments plus either pants or skirt, and said pants or skirt must cover from the waist down to a point at least two inches above the knee. All clothes worn in compliance with this Article shall be entirely nontransparent.

- (g) No business of a massage therapist shall be engaged in and no place of business shall be open for business except within and between the hours of 7:00 a.m. and 10:00 p.m.
- (h) A readable sign shall be posted at the main entrance identifying the establishment. Signs shall comply with the sign requirements of this Code.
- (i) Minimum lighting shall be provided in accordance with the State Building Code, and additionally, at least one artificial light of not less than 40 watts shall be provided in each enclosed room or booth.
- (j) Ordinary beds or mattresses shall not be permitted in any establishment.
- (k) The establishment, prior to the issuance of the license must be in compliance with all applicable building and life safety codes, and the building to be occupied must have a valid, current certificate of occupancy.
- (l) It shall be unlawful for any person less than 18 years of age to patronize any massage establishment unless such person carries with him at the time of such patronage, a written order directing the treatment to be given by a regularly licensed physician or written permission of the underage person's parent or guardian. It shall be the duty of the holder of a license to determine the age of the person attempting to patronize a massage establishment and to prohibit such patronage by an underage person.
- (m) No massage practitioner, or any of his employees, shall manipulate, fondle or handle the sexual organs or anus of any person.

#### *Section 8: Issuance*

- (a) When a license application is submitted in proper form, including all information and exhibits required herein and accompanied by the correct fees, the application shall be accepted and a review of the application and an inspection and investigation shall be conducted by the City Manager or his/her designee. The City Manager or his/her designee shall transmit a copy of the completed application to the City Police Department. Upon the payment by the applicant of the required fees, the City Police Department, or its designee, shall cause to be conducted a background investigation of the police record of the applicant, and shall transmit a summary of the investigation results to the licensing and revenue manager or his designee.
- (b) Upon receipt of the background investigation, and completion of review of the application in accordance with the terms of this article, the City Manager or his/her designee shall act on the application. The City Manager or his/her designee shall deny any application that:
  - (1) Fails to meet each of the application requirements specified herein.

- (2) Fails to meet each of the minimum standards specified in this Section.
- (3) Contains false information in the application or attached documents.

#### *Section 9: Grounds for Revocation and Suspension*

The license of a massage or spa establishment may be revoked or suspended upon one or more of the following grounds:

- (1) Failure of the holder to maintain initial requirements for obtaining the license.
- (2) The holder is guilty of fraud in the practice of massage, or fraud or deceit in his being issued the license for the practice of massage.
- (3) The holder is engaged in the practice of massage under a false or assumed name, or is impersonating another therapist of a like or different name.
- (4) The holder has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, disorderly conduct, or entered a plea of nolo contendere to any felony.
- (5) Any of the holder's employees, independent contractors or agents has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, or disorderly conduct in connection with the operation of the massage establishment or on or about the premises of the massage establishment.
- (6) Failure of the holder to maintain correct and accurate records as required by this Article.
- (7) Failure of the holder to actively supervise and monitor the conduct of the employees, independent contractors, agents, customers, or others on the premises in order to protect the health, safety and welfare of the general public and the customers.
- (8) The holder, his employees, agents, or independent contractors associated with the establishment have allowed to occur or have engaged in a violation of any part of this Article.
- (9) The holder has violated any of the provisions of this article.

#### *Section 10: Hearings*

No license for a massage or spa establishment shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided.

- (1) The City Manager or his/her designee shall provide written notice to the applicant or license holder of his order to deny, suspend or revoke the license. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the applicant or license holder of the right to appeal under the provisions of this Chapter.
- (2) Any applicant or license holder who is aggrieved or adversely affected by a final action of the City Manager may have a review thereof by appeal to the City Council. Such appeal shall be by written petition filed in the office of the City Manager or his/her designee within fifteen (15) days after the final order or action of the City Manager accompanied by a filing fee to defray administrative costs. The amount of the filing fee shall be as determined by the City Council. The City Manager or his/her designee, at his discretion, may waive or reduce the filing fee amount if it is determined the fee would create a hardship on the individual filing such appeal. The City Council may, at the request of the appellant, refund the filing fee by majority vote.
- (3) A hearing shall be conducted on each appeal within 30 days of the date of filing with the City Manager or his/her designee unless a continuance of such date is agreed to by the appellant and the City Manager or his/her designee. The appellant at such hearing shall have the right to be represented by an attorney, at the expense of the appellant, and to present evidence and cross examine witnesses. Should the appellant desire an official transcript of the appeal proceedings, then such request must be made at least three (3) days prior to such hearing. The appellant shall have the burden of proof on any such appeal.
- (4) Before hearing an appeal, each member of the City Council shall sign an affidavit to be part of the record that he is not related to or personal friends with any appellant or any owner of the establishment in question in the appeal being considered and that he has no financial interest in the outcome of the appeal. Should any member be unable to sign such an affidavit, that member shall not serve on that appeal and the case shall be heard by the remaining members of the City Council.
- (5) The findings of the City Council shall be forwarded to the City Manager or his/her designee within fifteen (15) days after the conclusion of the hearing, and it shall be the duty of the City Manager or his/her designee to notify the appellant and the Chief of Police or his/her designee of the action of the City Council.
- (6) The findings of the City Council shall be final.

#### **Article 9: Precious Metal Dealers**



### *Section 1: Definitions*

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Dealer* means any person engaged in the business of purchasing precious metals or gems or goods made from precious metals or gems from persons or sources other than manufacturers or manufacturers' representatives or other dealers in precious metals or gems or a person engaged in any other business if, in conjunction with such business, precious metals or gems or goods made from precious metals or gems are purchased from persons or sources other than manufacturers or manufacturers' representatives or other dealers in precious metals or gems when the purchase is for resale in its original form or is changed by remounting, melting, reforming, remolding or recasting, or for resale as scrap or in bulk.

*Employee* means any person working for a dealer, whether or not the person is in the direct employment of the dealer, who, in the performance of duties or the management of the business affairs of the dealer, handles precious metals or gems, or who prepares any reports or records which are required by this Article. "Employee" does not include any employee of any bank, armored car company, private security company, or other business entity which is acting in the sole capacity of bailee-for-hire in relationship to the dealer.

*Gem* means any precious or semiprecious stone cut and polished.

*Precious metal* means gold, silver, platinum or any alloy containing gold, silver or platinum.

*Purchase* means buy, barter, trade, accept as collateral for a loan, or receive for the purpose of melting down, crushing or otherwise altering the appearance of the item.

### *Section 2: Purpose; Applicability of State Law*

The purpose of this Article is to regulate and establish qualifications for dealers of precious metals, gems and goods made from precious metals and gems, who engage in business in the City of Dunwoody. It is a further purpose of this Article to enhance and supplement State law. Any permit fee required by the terms of this Article shall be collected in addition to any license or registration fee as may be imposed on dealers by any State law.

### *Section 3: Exemptions*

- (a) The provisions of this Article shall not apply to dealers exclusively engaged in the sale or exchange of numismatic coins or to transactions exclusively involving numismatic coins or other coinage.

- (b) The provisions of this Article shall not apply to pawnshops, pawnbrokers, or employees of pawnbrokers who maintain permanent places of business within the City of Dunwoody and are in compliance with Article 3 of this Chapter.

#### *Section 4: Violations*

- (a) It shall be unlawful for any dealer or employee to violate any of the provisions of this Article, whether or not such dealer or employee is the holder of a current, valid permit issued according to the terms of this Article. It shall be a violation of this Article for any person to:
  - (1) Make any false statement in an application for any permit provided for in this Article.
  - (2) Make any false entry in any record or form required by the terms of this Article.
  - (3) Violate any criminal law of this State while acting in the course of business as a dealer or employee of a dealer.
- (b) Willful violation of any of the provisions of this Article shall be grounds for revocation of the dealer's business license.

#### *Section 5: Responsibility for Enforcement*

The Police Department shall have the responsibility for the enforcement of this Article.

#### *Section 6: Records of Transactions*

- (a) Every dealer shall maintain a book in permanent form in which shall be entered at the time of each purchase of precious metals or gems or goods made from precious metals or gems, the following:
  - (1) The date and time of the purchase transaction.
  - (2) The name of the person making the purchase from the seller.
  - (3) The name, age and address of the seller of the items purchased and the distinctive number from each seller's driver's license or other similar identification card containing a photo of the seller.
  - (4) A clear and accurate identification and description of the purchased goods, including the serial model or other number, and all identifying marks ascribed thereon.
  - (5) The price paid for the goods purchased.

- (6) The number of the check issued for the purchase price if payment is made by check.
- (7) The signature of the seller.
- (b) The permanent record book required in this Section shall be in legible English. Entries shall appear in chronological order, and shall be numbered in sequence. No blank lines may be left between entries. No obliterations, alterations or erasures may be made. Corrections shall be made by drawing a line of ink through the entry without destroying its legibility. The book shall be maintained for each purchase of precious metals or gems or goods made from precious metals or gems for at least two (2) years. The book shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or any reasonable time. The book shall be kept at the business premises during ordinary hours of business.
- (c) Dealers exclusively engaged in buying or exchanging for merchandise scrap dental gold and silver from licensed dentists by registered or certified mail may record the post office record of the mail parcel in lieu of the seller's age, driver's license number and signature as required in this section.

#### *Section 7: Daily Reports*

- (a) Every dealer shall record, on cards or forms furnished or approved by the Police Department the details of each purchase of precious metals or gems or goods made from precious metals or gems. These records shall be entered in legible English at the time of each purchase of such items, and each card or form shall bear the number of the corresponding entry made in the book required by Section 6 of this Article. Each record shall include such information as may be reasonably required by the Police Department and shall include, as a minimum, the following:
  - (1) An accurate description of all articles received in the transaction with the particular seller. This description shall include to the extent possible the maker of each article, any identifying mark, number or initials, any pattern or shape, and a statement of the kind of materials of which it is composed.
  - (2) The date and time of the transaction.
  - (3) The name and address of the dealer.
  - (4) The name of the person making the purchase.
  - (5) The full name, date of birth and address, race and gender of the seller, as well as a general description of the seller.
  - (6) The number of the seller's valid state driver's license or state-issued I.D. card, or other similar identification which bears a photograph of the seller.

- (7) Signature of seller.
- (8) Such other information as may be required by any State law regulating dealers of precious metals and gems.
- (b) Each card or form required by this Section shall be delivered or mailed to the Police Department within twenty-four (24) hours after the date on which the transaction occurred, and shall be handled in the following manner:
  - (1) All such forms or cards shall be maintained in a locked container under the direct supervision of the Police department and shall be available for inspection only for law enforcement purposes.
  - (2) The Police Department may allow any person to inspect the records for the purpose of locating stolen property, providing such person demonstrates theft of precious metals or gems by presenting an incident report or other similar document.

*Section 8: Photographs of articles and sellers; Photocopies of documents*

- (a) Every dealer shall take a well-focused, properly exposed color photograph of all precious metals, gems or goods made from precious metals or gems, which are purchased by the dealer. In the case of flatware, a photograph may be made of a representative place setting.
- (b) In addition to photographing the items purchased, the dealer shall take a well-focused, properly exposed color photograph of the seller, and shall attach the photograph to the corresponding form or card required by Section 7 of this Article. In addition to the required photographs, the dealer shall attach to the form or card a photocopy of any bill of sale, receipt or other document tending to show the seller's ownership of the items purchased by the dealer, if any such documents exist, and a photocopy of the seller's driver's license or other identification authorized by this Article.
- (c) All photographs required in this Section shall be made with a self-developing camera and film system, or such other system as may be authorized in writing by the Police Department.

*Section 9: Hours of Operation*

Dealers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m.

*Section 10: Waiting period prior to disposing of articles*

Any dealer who in the course of business acquires precious metals or gems or goods made from precious metals or gems shall hold these items for at least seven (7) calendar days before disposing of them by sale, transfer, shipment, grinding, melting, crushing or otherwise altering the appearance of the items. This Section does not prevent any dealer from storing such items off the business premises, or from placing such items in the hands of any bank or security company for safekeeping, provided that no such item shall be removed from the City during the above-described holding period.

#### *Section 11: Inspection of items held by dealer*

All items held by any dealer in accordance with the terms of Section 10 of this Article shall be produced for inspection upon the demand of any authorized law enforcement officer or, if the items are stored off the premises, within one (1) business day thereof, during normal business hours. If the provisions of this Section are in conflict with the provisions of Section 10 of this Article, the provisions of this Section shall control.

#### *Section 12: Permit required; Prerequisite to issuance of business license*

- (a) No business license shall be issued to conduct the business of purchasing precious metals or gems until the annual permit required by this section has been issued by the Police Department.
- (b) No dealer shall engage in the business of purchasing precious metals or gems without having first obtained an annual permit issued by the City Manager or his/her designee and no dealer shall allow an employee to be involved in any way in the purchase of precious metals or gems until that employee has first obtained an annual employee permit from the City Manager or his/her designee and no person shall work as an employee of a dealer until such person has first obtained an annual employee permit. No annual employee permit shall be issued unless the dealer with whom employment is authorized is a holder of a current dealer's permit.

#### *Section 13: Application*

- (a) The application for the annual dealer's permit required by this division shall include such fingerprints, photographs and information as may be reasonably required by the City Manager or his/her designee, but shall in any case include the following:
  - (1) The name, age and business address of the person applying for the permit.
  - (2) The telephone number of the applicant.
  - (3) The name, age and business address of all other persons having an ownership interest or actually employed in the business other than publicly held corporations.

- (4) The address of the premises upon which the business is conducted and the zoning and planning classification of the premises.
  - (5) The applicant shall be required to notify the police department within seven (7) calendar days of any change of address of the applicant or business or any change of ownership in the business.
- (b) The applicant shall attach to this application a completed and signed employee or owner application as described in Section 15 of this Article for each person named in the dealer's application. Each such application shall be signed by the owner, managing partner, corporate president or chief executive officer of the business, and there shall be a description of the capacity in which the signator is acting.

#### *Section 14: Denial*

No permit required by the provisions of this Article shall be issued under any of the following circumstances:

- (1) The applicant has no permanent place of business other than a van, mobile home, trailer or similar nonpermanent structure.
- (2) No owner, corporate officer, majority stockholder, partner or managing director of the business entity applying for the license has been a legal resident of the State of Georgia for a minimum of ninety (90) days preceding the date of application.
- (3) Any person required to be listed in the application for a dealer's permit has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony under the laws of this State or of the jurisdiction in which the verdict or plea was entered. This paragraph does not apply to any person who has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony after ten (10) years have expired from the date of the plea, conviction or completion of sentence, whichever is later.
- (4) The person is not eligible to register as a dealer in precious metals or gems by the terms of any law of this State requiring such registration.

#### *Section 15: Employee or owner application*

- (a) Persons required to obtain an employee permit by this Article shall complete an employee or owner application which shall state relevant information including, but not limited to, the following:
  - (1) Name.
  - (2) Date of birth.

- (3) Driver license, state identification card or social security number.
  - (4) Race.
  - (5) Sex.
  - (6) Residential address and telephone number.
  - (7) Last previous residential address.
  - (8) Height and weight.
  - (9) Hair and eye color.
  - (10) Name, address and telephone number of the dealer.
  - (11) Either a statement that the applicant has never been convicted of, plead guilty to or been sentenced to probation for any offense other than a minor traffic violation, or a list of all such pleas, convictions and sentences of probation.
- (b) The application form shall also provide a place for the applicant's signature. Persons required to be listed in a dealer's application shall also complete an employee or owner application.

#### *Section 16: Fingerprints*

All persons required to complete an employee or owner application shall also submit to fingerprinting by the police department or by any agency or individual designated by the Police Department.

#### *Section 17: Issuance; fee*

- (a) The City Manager or his/her designee shall provide the permit application forms required by this Article, and shall review each completed application prior to issuing any permit. No employee or dealer permit shall be issued if it appears that the applicant or any person required to complete an employee or owner form has been convicted of, or has entered a plea of guilty to a misdemeanor involving moral turpitude, or any felony.
- (b) After ascertaining that all requisite forms have been completed, all fingerprint cards have been submitted, that no applicant or listed person is disqualified by virtue of a prior criminal record, and that all other requirements of this Article have been complied with, the City Manager or his/her designee shall approve the application, subject to payment of an annual permit fee in the amount established by action of the City Council, a copy of which is on file in the office of the City Clerk.

#### *Section 18: Expiration and renewal*

Each permit required by this Article shall indicate thereon an expiration date which is at least one (1) year from the date of issue and must be posted in a conspicuous place on the premises. Any permit holder may reapply for a permit at any time following the sixtieth (60<sup>th</sup>) day preceding the date of expiration. It shall be unlawful for any dealer to apply for a renewal unless all of the dealer's employees are holders of current, valid employee permits. No permits shall be renewed unless the dealer is the holder of a current, valid business license.

#### *Section 19: Revocation and surrender of permits*

- (a) Any dealer or employee permit issued in accordance with provisions of this Article shall be revoked by operation-of-law upon the occurrence of any of the following:
  - (1) The conviction of the dealer or employee for violating any State law, County or City ordinance pertaining to making false statements for the purpose of obtaining registration or authorization to become a dealer or employee of a dealer.
  - (2) The conviction of the dealer or employee for violation of a provision of this Article after the dealer or employee has been previously convicted of a violation of this Article within the preceding three (3) years.
- (b) Upon revocation, the permit holder shall surrender the permit to the City Manager or his/her designee within one (1) business day of the conviction resulting in revocation, and failure to do so shall constitute a separate violation for each day the permit is withheld.

#### *Section 20: Appeals*

In any case in which it appears to the City Manager or his/her designee that an applicant is not entitled to the issuance of a dealer or employee permit under the provisions of this Article, the City Manager or his/her designee shall so notify the applicant in writing by mailing the notice to the last address furnished to the City Manager or his/her designee by the applicant. If the City Manager or his/her designee refuses to issue a permit, or if a permit is surrendered pursuant to the provisions of this Article, the applicant or permit holder shall have an absolute right of appeal to the City Council according to the procedures set forth herein. The appeal shall be perfected by filing with the City Manager or his/her designee a notice of appeal to the City Council. The notice of appeal to the City Council must be filed with the City Manager or his/her designee within fourteen (14) days following the mailing of the notification of denial or surrender of the permit and it shall be the duty of the City Manager or his/her designee, upon receipt thereof, to transmit such notice of appeal to the City Clerk, together with copies of all papers constituting the record upon which the action appealed from was taken. Thereafter, it shall be the duty of the City Clerk to place the appeal upon the agenda of the City Council the first available date for hearing on the matter. It shall be the duty of the City Clerk to so notify the appellant in writing of the date, time and place when the matter shall be heard.



**INTERGOVERNMENTAL AGREEMENT  
FOR THE PROVISION OF FIRE RESCUE SERVICES  
BETWEEN  
DEKALB COUNTY, GEORGIA and  
THE CITY OF DUNWOODY, GEORGIA**

**THIS INTERGOVERNMENTAL AGREEMENT, is entered into by and between DeKalb County, Georgia (“County”) and the City of Dunwoody, Georgia (“City”).**

WHEREAS, DeKalb County, Georgia is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City of Dunwoody is a municipality created by the 2008 Georgia General Assembly pursuant to Senate Bill 82 (hereinafter referred to as “SB 82”) ; and

WHEREAS, SB 82 provides that the city of Dunwoody begins operations December 1, 2008 and Section 6.03(c) requires the County to “...provide within the territorial limits of the City all government services and functions which DeKalb County provided in 2008; and

WHEREAS, the residents of Dunwoody have paid the same taxes as paid by residents of unincorporated DeKalb County for 2008 and the payment of those county taxes entitles the City and its residents to be provided with the 2008 county governmental services and functions until December 31, 2008 without any further compensation from the City or its residents to the County; and

WHEREAS, this intergovernmental agreement therefore only becomes effective on the date that the City will begin paying for services as set forth in this Agreement; and

WHEREAS, the County and City desire to enter into an Intergovernmental Agreement for the County to provide fire rescue services within the boundaries of Dunwoody for a period of one year beginning January 1, 2009; and

WHEREAS, the County and the City further desire to establish the cost of fire rescue services to be provided by the County to the City pursuant to this Agreement; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions.

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

## **ARTICLE 1 PURPOSE AND INTENT**

The purpose of this Agreement is to provide fire rescue services within the City.

## **ARTICLE 2 DEFINITIONS**

For the purposes of the Agreement, the following terms shall be defined as:

2.1 **“Fire Chief”** means the director of the DeKalb County Fire and Rescue department or designee.

2.2 **“Fire Code”** means (1) those applicable provisions of state law related to fire rescue services, including the state fire safety rules, the International Fire Code and (2) those applicable provisions of the Code of Dekalb County, Georgia related to fire rescue services including but not limited to chapter 12 of the Code of Dekalb County, Georgia and (3) those applicable provisions of the Ordinances of the City of Dunwoody, Georgia that may be enacted during the term of this Agreement related to fire rescue services. .

2.2 **“Fire prevention tax district”** means the area of land in DeKalb County, Georgia that has been designated as the fire prevention tax district in which the County imposes and collects from the taxpayers in the district a separate fire tax for the purpose of defraying the cost of the County fire rescue services provided to the taxpayers in the district.

2.3 **“Fire Rescue Services”** means fire suppression, community risk reduction, fire protection, disaster mitigation, rescue, hazardous material response and emergency medical service transports service provided by County Fire and Rescue Department personnel.

## **ARTICLE 3 TERM OF AGREEMENT**

The term of the Agreement is for one year, commencing January 1, 2009 at 0000 hours and concluding at 2400 hours on December 31, 2009. This Agreement shall automatically renew without further action by the City or County on January 1<sup>st</sup> of each succeeding year for an additional one (1) year for a total lifetime Agreement of fifty (50) years, unless previously terminated in accordance with the termination provisions of this Agreement. At the conclusion of this term, the City will be solely responsible for providing all fire rescue services within its boundaries, unless extended by mutual Agreement by both governing bodies. The parties agree that, as of that date, the County’s obligation (pursuant to O.C.G.A. 36-31-8 and Section 6.03 of SB 82) to provide the services covered by this Agreement shall terminate, and that this provision constitutes the agreement for the assumption of these services by the City as contemplated by O.C.G.A. 36-31-8 and Section 6.03 of SB 82.

## **ARTICLE 4 COMPENSATION AND CONSIDERATION**

4.1 For the fire rescue services to be rendered during the term of this Agreement, the City agrees that the County shall remain entitled to impose and collect the fire prevention district tax annually in the same manner and at the same rate that such tax is imposed and collected within the portion of the DeKalb fire prevention tax district that is located in unincorporated DeKalb County. The City agrees to remain within the DeKalb fire prevention tax district and nothing in this Agreement shall preclude the County's right to continue to collect DeKalb fire prevention district taxes from the residents of the City for all fire rescue services originating within the City of Dunwoody.

4.2 The City agrees that County remains entitled to impose, collect and retain all ambulance transport fees. Fees charged shall be equal to those imposed upon residents of unincorporated DeKalb County, whether in effect at the time of this agreement or approved by the DeKalb County Governing Authority at some future date. Nothing in this Agreement shall preclude the County's right to continue to collect such fees for ambulance transport calls originating from within the City of Dunwoody.

## **ARTICLE 5 FIRE CHIEF**

The Fire Chief will direct and manage the daily fire rescue operations in the City and supervise the delivery of fire rescue services contracted for in this Agreement.

## **ARTICLE 6 SERVICES**

6.1 During the term of this Agreement, the County shall provide the same fire rescue services to the City as are provided in unincorporated area of DeKalb County. Such fire rescue services shall equal or exceed the fire rescue services provided by the County in 2008 within the area that comprises the City. The County shall provide fire rescue services on a continual 24-hour per day basis. The County and the City intend to enter into mutual aid agreements, which shall govern the parties in case of emergencies requiring assistance from neighboring fire departments.

6.2 Response times in the City shall remain consistent with those response times in unincorporated DeKalb County. County-wide response reports will be provided by the Fire Chief if requested by the City Manager.

6.3 All emergency incidents within the City shall operate under the National Response Plan (NRP) utilizing the National Incident Management System (NIMS). During the term of this agreement, the City agrees that it will not adopt any ordinance that in any way amends, repeals or replaces the applicable fire rescue provisions of the Code of DeKalb County, Georgia, including but not limited to chapter 12 of the Code of DeKalb County, Georgia and any amendments thereto without the written consent of the Fire Chief. Such consent shall not be unreasonably withheld.

## **ARTICLE 7 EQUIPMENT**

The County agrees to provide DeKalb County fire and rescue personnel assigned to work within the City with all necessary equipment and motor vehicles in connection with this Agreement in order to perform the agreed upon fire rescue services, in accordance with DeKalb County Fire and Rescue department policies and procedures. The County agrees to maintain said equipment and vehicles and to provide replacements as necessary during the term of the Agreement. All DeKalb County Fire and Rescue Officers assigned hereunder shall wear the uniform and insignia as issued and ordered by the DeKalb County Fire and Rescue Department.

## **ARTICLE 8 AUTHORITY TO ENFORCE THE LAW IN DUNWOODY**

8.1 The Fire Chief shall designate the fire rescue officers to take an oath administered by an official authorized by the City of Dunwoody to administer oaths, as prescribed by O.C.G.A. §§ 45-3-1 and 45-3-10.1 prior to undertaking fire rescue duties pursuant to this Agreement to enforce the fire code.

8.2 Every fire and rescue officer of the County assigned to the City shall still be deemed to be a sworn officer of the County while performing the services, duties and responsibilities hereunder and is vested with the “police powers” of the County that are necessary to provide the fire rescue services within the scope of this Agreement.

8.3 The Fire Chief shall be and hereby is vested with the additional power to enforce the fire code, to make arrests or issue citations incident to the enforcement of the fire code, and to perform other tasks as are reasonable and necessary in the exercise of their powers. This vesting of additional powers to enforce the fire code is made for the sole and limited purpose of giving official and lawful status to the performance of fire rescue services provided by fire and rescue officers within the City of Dunwoody.

8.4 Fire and Rescue officers shall enforce the fire code and shall appear in the Municipal Court of the City of Dunwoody as necessary to prosecute cases made therein. The City further agrees to provide, at its own expense, citation books containing the printed Municipal Court information to the fire rescue officers working within the City.

## **ARTICLE 9 EMPLOYMENT STATUS**

All County Fire and Rescue Department personnel operating in the City, as well as any other County personnel operating under this Agreement are and will continue to be employees of the County for all purposes, including but not limited to duties and responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions. All County Fire and Rescue Department personnel operating in the City as well as any other sworn personnel assigned under this Agreement are and will continue to be part of the DeKalb County Fire and Rescue

Department command structure. Fire and rescue personnel are under the supervision of the DeKalb County Fire Chief.

## **ARTICLE 10 FIRE INSPECTION AND PREVENTION**

10.1 The County shall also provide “fire inspection and prevention services” which include, but are not limited to, the following:

- a. review of all interior finished, new structures, additions and renovation of all commercial buildings and multi-family buildings, whether existing or to be constructed in the City;
- b. Reviewing plans for both new construction and renovations of existing structures;
- c. Final inspections for all commercial and multi-family buildings;
- d. Inspections for business licenses or change of occupancy;
- e. Inspections required for setting occupancy loads;
- f. Enforcement of fire lane and handicap parking regulations; and
- g. Enforcement of the fire code.

10.2 The County shall be entitled to collect the plan review, permit and inspection fees in connection with commercial and multi-family buildings constructed or renovated in the City if such structures or plans are reviewed or inspected by the Fire and Rescue Department. Fees charged shall be equal to those imposed upon residents of unincorporated DeKalb County for similar permits, inspections and plan reviews, whether in effect at the time of this agreement or as approved by the DeKalb County Governing Authority at some future date.

10.3 Construction plans and accompanying documents for all buildings subject to the provisions of this Agreement shall be submitted to the Fire Chief. Interior finish work and minor building additions may make use of the Fire and Rescue department “walk through” process.

10.4 Following completion of final inspection of commercial and multi-family buildings by the Fire Chief:

- a. The City shall not issue any Certificate of Occupancy without the express written approval of the Fire Chief.
- b. The City shall issue the Certificate of Occupancy when the City is satisfied that the project has complied with all City requirements.
- c. The City shall be responsible for notifying utilities companies in connection with the issuance of Certificates of Occupancy.
- d. The issuance of the Certificate of Occupancy by the City shall in no way obligate the City to make any plan review or inspections of the building, and it is specifically agreed that the City shall have the right to rely upon the plan review and inspections performed by the Fire Chief.

10.5 Retaining walls, tents, signs, greenhouses, satellite dishes, Christmas tree lots, emission inspections stations, and similar projects or structures shall not be subject to the

provisions of this Agreement, and the City shall continue to issue permits and/or approvals for such projects.

10.6 Both the City personnel and the County Fire and Rescue officers are authorized to issue citations for violations of the fire code.

10.7 The City shall be responsible for inspections of all erosion control and site work on all projects within the City.

10.8 The City shall be responsible for enforcement of building code requirements and shall issue all citations necessary to prosecute any building code violations in the Municipal Court of Dunwoody.

## **ARTICLE 11 RECORDKEEPING AND REPORTING**

The County Fire and Rescue Department is the central repository for all departmental records and makes available public records as defined by the Georgia Open Records Act, O.C.G.A. 50-18-70, *et seq.* During the term of this Agreement, the County will continue to maintain all reports relating to Fire and Rescue Department activity within the City. Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

## **ARTICLE 12 CITY – COUNTY RELATIONS**

The DeKalb County Fire Chief will notify the City Manager in the event of a significant fire rescue emergency situation within the City. The DeKalb County Fire Chief and City Manager shall designate what they consider “significant” by a memorandum. The County shall be the sole provider of services within the city that require sworn fire rescue personnel during the term of this Agreement.

## **ARTICLE 13 TRANSITION**

The County and City agree that 90 days prior to the end date of this Agreement, the City Manager and Executive Assistant will meet and confer to effect a smooth transition.

## **ARTICLE 14 TERMINATION AND REMEDIES**

14.1 The City may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the County. If the City intends to terminate this Agreement for cause, the City must notify the County in writing, specifying the cause, extent and effective date of the termination. The County shall have thirty three (33) days after the date of the written notice from the City to cure the stated cause for termination.

14.2 On December 1, 2011 at 2400 hours, the parties agree that the County's obligation pursuant to O.C.G.A. 36-31-8 and Section 6.03 of SB 82 to provide the government functions and services described in this Agreement shall terminate as contemplated by O.C.G.A. 36-31-8 and Section 6.03 of SB 82.

14.3 Beginning December 2, 2011 at 0000 hours, the County may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the City. If the County intends to terminate this Agreement for cause, the County must notify the City in writing, specifying the cause, extent and effective date of termination. The City shall have thirty three (33) days after the date of the written notice from the County to cure the stated cause for termination.

14.4 The parties reserve all available remedies afforded by law to enforce any term of condition of this Agreement.

## **ARTICLE 15 NOTICES**

All required notices shall be given by first class mail, except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. The parties agree to give each other non binding duplicate facsimile notice. Notices shall be addressed to the parties at the following addresses:

If to the County:

Richard Stogner, Executive Assistant  
1300 Commerce Drive 6<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-2883, Office number  
404-371-2116, Facsimile number

With a copy to:

William J. Linkous, III County Attorney  
1300 Commerce Drive, 5<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-3011, Office number  
404-371-3024, Facsimile number

If to the City:

City of Dunwoody

\_\_\_\_\_, Georgia  
Office number:  
Facsimile number:

With a copy to:

Brian Anderson, City Attorney  
(Insert address, phone number and facsimile number)

**ARTICLE 16  
EXTENSION OF AGREEMENT**

This Agreement may be extended at any time during the term by mutual written consent of both parties so long as such consent is approved by official action of the City Council and approved by official action of the County governing authority.

**ARTICLE 17  
NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 18  
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 19  
SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.



## **ARTICLE 20 BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

## **ARTICLE 21 INDEMNITY**

21.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City defend, indemnify and hold harmless the County and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the City, its employees, officers and agents. The County shall promptly notify the City of each claim, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation.

21.2 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the County defend, indemnify and hold harmless the City and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the County, its employees, officers, and agents. The City shall promptly notify the County of each claim, cooperate with the County in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the County participation.

21.3 The indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the term of this Agreement.

## **ARTICLE 22 COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers.**

**SIGNATURES APPEAR ON THE FOLLOWING PAGES**

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_(SEAL)

Vernon Jones  
Chief Executive Officer  
DeKalb County, Georgia

ATTEST:

\_\_\_\_\_  
Michael Bell  
Ex Officio Clerk of the  
Board of Commissioners of  
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
William J. Linkous, III  
County Attorney

\_\_\_\_\_  
Richard Stogner  
Executive Assistant

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

**CITY OF DUNWOODY, GEORGIA**

---

**Ken Wright**  
**Mayor**

---

**Municipal Clerk**                      **(SEAL)**

**Approved as to Form:**

**Approved as to Substance:**

---

**Brian Anderson**  
**City Attorney**

---

**Warren Hutmacher**  
**City Manager**

**ORDINANCE GRANTING FRANCHISE**

**To**

**GEORGIA POWER COMPANY**

**By**

**CITY OF DUNWOODY**

**On**

\_\_\_\_\_, 2008

**The within franchise accepted on**

\_\_\_\_\_, 2008.

**GEORGIA POWER COMPANY**

**By: \_\_\_\_\_**  
**President**

ORDINANCE GRANTING PERMISSION AND CONSENT to Georgia Power Company, a Georgia corporation, and its successors, lessees, and assigns (hereinafter referred to collectively as the "Company") to occupy the streets and public places of the City of Dunwoody, Georgia, a municipality and political subdivision of the State of Georgia (hereinafter referred to as the "City"), in constructing, maintaining, operating, and extending poles, lines, cables, equipment, and other apparatus for transmitting and distributing electricity and for other purposes.

SECTION I. Be it ordained by the governing authority of the City that the authority, right, permission, and consent are hereby granted to the Company, for a period of thirty-five (35) years from the date of the Company's acceptance hereof, to occupy and use the streets, alleys, and public places of the City within the present and future corporate limits of the City as from time to time the Company may deem proper or necessary for the overhead or underground construction, maintenance, operation, and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections, and other apparatus (hereinafter referred to collectively as the "Company's Facilities") for the business and purpose of transmitting, conveying, conducting, using, supplying, and distributing electricity for light, heat, power, and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys, and public places from time to time as the Company may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary, in the judgment of the Company, to insure safe and efficient service.

SECTION II. Be it further ordained that the rights, permission, and consents herein contained are granted for the following considerations and upon the following terms and conditions:

1. The Company shall pay into the treasury of the City (a) on or before the first day of March in each year following the granting of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential and commercial rate schedules (as prescribed by the Georgia Public Service Commission) within the corporate limits of the City during the preceding calendar year and four percent (4%) of the gross sales of electric energy to customers served under industrial rate schedules (as so prescribed) within the corporate limits of the City during the period beginning on the first day of the month following the granting of this franchise and ending on December 31 thereafter and (b) on or before the first day of March of each year thereafter during the term of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential, commercial, and industrial rate schedules (as so prescribed) within the corporate limits of the City during the preceding calendar year, on condition that in the event the City shall grant to any other entity the right to use and occupy the City's streets for like purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof.

2. The amount, if any, of any tax, fee, charge, or imposition of any kind required, demanded, or exacted by the City on any account, other than ad valorem taxes on property, shall operate to reduce to that extent the amount due from the percentage of gross sales provided for in paragraph 1 of this Section II.

3. The Company shall fully protect, indemnify, and save harmless the City from all damages to persons or property caused by the construction, maintenance, operation, or extension of the Company's Facilities, or conditions of streets, alleys, or public places resulting therefrom, for which the City would otherwise be liable.

4. The Company shall, in constructing, maintaining, operating, and extending the Company's Facilities, submit and be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require the Company to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.

5. For purposes of paragraph 6 of this Section II, the term "Distribution Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of the Company (whether before or after the adoption of this ordinance) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future corporate limits of the City. Distribution Facilities do not include any of the following: (i) electric transmission lines with a design operating voltage of 46 kilovolts or greater (hereinafter referred to as "Transmission Lines"); (ii) poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter referred to as "Transmission Structures"); (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures; (iv) lines, wires, cables, or conductors installed in concrete-encased ductwork; or (v) network underground facilities.

6. In the event that the City or any other entity acting on behalf of the City requests or demands that the Company relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then the Company shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. The Company's obligations under this paragraph 6 shall apply without regard to whether the Company has acquired, or claims to have acquired, an easement or other property right with respect to such Distribution Facilities and shall not affect the amounts paid or to be paid to the City under the provisions of paragraph 1 of this Section II. Notwithstanding the foregoing provisions of this paragraph 6, the Company shall not be obligated to relocate, at its expense, any of the following: (i) Distribution Facilities that are located on private property at the time relocation is requested or demanded; (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (iii) Distribution facilities that are relocated in connection with streetscape projects or other projects undertaken primarily for aesthetic purposes; or (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation.

7. The City and the Company recognize that both parties benefit from economic development within the City. Accordingly, when it is necessary to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) within the City, the City and the Company shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, the City and the Company shall communicate in a timely fashion to coordinate projects included in the City's five-year capital improvement plan, the City's short-term work program, or the City's annual budget in an effort to minimize relocation of the Company's Facilities. Such communication may include, but is not limited to, (i) both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or any successor organization) or a local utilities coordinating council (or any successor organization) and (ii) both parties' use of the National Joint Utility Notification System (or any successor to such system mutually acceptable to both parties).

8. With regard to each streetscape project undertaken by or on behalf of the City, the City shall pay the Company in advance for the Company's estimated cost to relocate any of the Company's Facilities

(whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) in connection with such project. For each streetscape project, the Company shall estimate in good faith the amount of incremental base revenue, if any, that the Company will realize as a result of new customer load or expansion of existing customer load attributable to such project; and such estimate shall be based on tariffs in effect at the time that construction of such project begins and shall not include fuel recovery charges, non-electric service billings, or taxes. If such estimate indicates that the Company will realize incremental base revenue, the Company shall do one of the following, whichever results in greater cost savings to the City: (i) reduce the City's advance payment to the Company for relocation costs by ten percent (10%); or (ii) where the City has developed a bona fide marketing plan within twelve (12) months after construction of such project begins, either refund the amount of the Company's incremental base revenue during such twelve-month period to the City or credit such amount against any future payment due from the City to the Company. The City and the Company acknowledge and agree that the amount of any refund or credit calculated pursuant to clause (ii) of the foregoing sentence of this paragraph 8 shall not exceed the amount of the City's advance payment to the Company for relocation costs associated with such project.

SECTION III. Be it further ordained that nothing contained in this ordinance shall limit or restrict the right of customers within the corporate limits of the City to select an electric supplier as may hereafter be provided by law.

SECTION IV. Be it further ordained that from time to time after the approval of this ordinance, the Company and the City may enter into such additional agreements as the Company and the City deem reasonable and appropriate; provided, however, that such agreements shall not be inconsistent with the terms and conditions of the franchise granted in this ordinance, shall not extend beyond the term of the franchise, and shall be enforceable separate and apart from the franchise.

SECTION V. Be it further ordained that the Company shall, within ninety (90) days from the approval of this ordinance, file the Company's written acceptance of the franchise granted in this ordinance with the Clerk of the City, so as to form a contract between the Company and the City.

SECTION VI. Be it further ordained that upon such acceptance all laws and ordinances, and all agreements between the Company and the City with respect to the Company's use of the City's streets, alleys, and public places, in actual conflict herewith be and the same shall thereupon stand repealed and terminated, respectively.

Adopted by the City Council of the City of Dunwoody, Georgia, at a meeting held on \_\_\_\_\_, 2008.

Approved: \_\_\_\_\_, 2008.

\_\_\_\_\_  
Mayor

I, \_\_\_\_\_, Clerk of the City of Dunwoody, Georgia, hereby certify

that I was present at the meeting of the City Council of the City of Dunwoody, Georgia, held on \_\_\_\_\_, 2008, which meeting was duly and legally called and held, and at which a quorum was present, and that an ordinance, a true and correct copy of which I hereby certify the foregoing to be, was duly passed and adopted by the City Council of the City of Dunwoody, Georgia, at said meeting.

IN WITNESS WHEREOF, I hereunto set my hand and the corporate seal of the City of Dunwoody,

County of Fulton, State of Georgia, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Clerk



**INTERGOVERNMENTAL AGREEMENT  
FOR THE PROVISION OF WATER AND WASTEWATER SERVICES  
between  
DEKALB COUNTY, GEORGIA AND  
THE CITY OF DUNWOODY, GEORGIA**

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**THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia (“County”) and the City of Dunwoody, Georgia (“City”).**

WHEREAS, the City of Dunwoody was created by act of the State of Georgia General Assembly in 2008, which was ratified by its citizens by referendum to create an effective date for the new city of December 1, 2008; and

WHEREAS, as provided by O.C.G.A. § 36-70-20, *et seq.*, DeKalb County provides water treatment and distribution and wastewater collection and treatment services for various municipalities in the County pursuant to a Service Delivery Strategy Agreement approved by the County on August 24, 1999 and as subsequently amended, among and between the County and the various municipalities located therein; and

WHEREAS, DeKalb County has provided water treatment and distribution and wastewater collection and treatment services to residents of Dunwoody, through its facilities as maintained and improved over time, for many decades pursuant to various agreements, including the Service Delivery Strategy Agreement; and

WHEREAS, the creation of the City of Dunwoody, as a new municipality within DeKalb County, requires the County and the City of Dunwoody to enter into an agreement as to the provision of water and wastewater services within the municipal boundaries of the City of Dunwoody pursuant to the processes and procedures of the Service Delivery Strategy Act (“Act”), O. C. G. A. § 36-70-20, *et seq.*; and

WHEREAS, pursuant to the Act, the Service Delivery Strategy Agreement between DeKalb County and the municipalities within its jurisdiction must be amended to provide for the addition of the City of Dunwoody, and, specifically, the provision of water and wastewater services by the County to residents of the City of Dunwoody; and

WHEREAS, because an amendment to the current Service Delivery Strategy Agreement cannot be completed by December 1, 2008, the parties desire to enter into an intergovernmental agreement governing the continuation of the provision of water and wastewater services by the County to residents of the City of Dunwoody until such time that the Service Delivery Strategy Agreement is duly amended to account for such services; and

WHEREAS, the County and City desire to enter into an Intergovernmental Agreement to provide water treatment and wastewater collection and treatment services within the boundaries of the City of Dunwoody for a period of three years beginning December 1, 2008 or ending on the date the Service Delivery Strategy Agreement is amended; and

WHEREAS, the County and the City of Dunwoody desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions.

**NOW THEREFORE, in consideration of the following mutual obligations, the County and the City of Dunwoody agree as follows:**

**Section 1.** The County will provide water treatment and distribution and wastewater collection and treatment services to the residents of the City of Dunwoody as are currently recorded as customers of the County or as may become customers of the County, pursuant to the terms of the Service Delivery Strategy Agreement approved by the County on August 24, 1999 and as subsequently amended, until such time as the terms of the provision of water and wastewater services is formally agreed upon by the parties and incorporated into a duly adopted amendment to the current Service Delivery Strategy Agreement or other agreement, if such other agreement is deemed appropriate and necessary. Until such time as such an agreement is effective, the following shall apply to the provision of water and wastewater services to the City of Dunwoody in addition to the terms of the current Service Delivery Strategy Agreement:

- 1.1 The level of service to the residents of the City of Dunwoody will be provided as is set forth in the current Service Delivery Strategy Agreement and shall be equal to or exceed the level of service provided by the County in 2008 within the area that comprises the territorial limits of the City of Dunwoody.
- 1.2. The rate structure for the residents of the City of Dunwoody will be established at the level set as of the effective date of this Agreement or as amended by DeKalb County Governing Authority.

**Section 2.** On or before January 1, 2009, the City will adopt a water and sewage disposal ordinance that is no less stringent and is as broad in scope as Attachment "A", codified in chapter 25, sections 25-1 through 25-359 of the Code of DeKalb County, Georgia, attached hereto and incorporated by reference, (hereinafter referred to as the County's water and sewage disposal ordinance). If the City does not enact a water and sewage disposal ordinance at least as stringent as the County's water and sewage disposal ordinance prior to February 1, 2009, this Agreement will immediately terminate with no further action required of the County. Whenever the County intends to amend its water and sewage disposal ordinance, it will forward a copy of such proposed amendment(s) 30 days prior to the date of enactment to the City Manager. If the City does not enact amendments at least as stringent as those

adopted by the County within 60 days of the County's enactment, this Agreement will immediately terminate with no further action required of the County.

**Section 3.** The parties agree to cooperate fully to reach an agreement for the provision of water and wastewater services by the County to the residents of the City of Dunwoody within the municipal boundaries of the City of Dunwoody, pursuant to the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, *et seq.* for the purpose of amending the current Service Delivery Strategy Agreement between DeKalb County and all municipalities within its jurisdiction to include the City of Dunwoody and the water and wastewater services agreement or such other agreement as may be deemed appropriate and necessary. All efforts will be made to reach an agreement as soon as practical and without undue delay, understanding that the need for such an agreement is critical to both parties and for the proper function of intergovernmental relations between the County and the City of Dunwoody.

**Section 4.** The term of the Agreement is for one year, commencing December 1, 2008 at 0000 hours and concluding at 2400 hours on December 1, 2009. This Agreement shall automatically renew without further action by the City or the County on January 1st of each succeeding year for an additional one (1) year for a total lifetime Agreement of fifty (50) years, unless previously terminated in accordance with the termination provisions of this Agreement. The City and the County may not terminate this Agreement prior to December 1, 2011, unless the parties reach an agreement for the provision of water and wastewater services by the County to the residents of the City of Dunwoody within the municipal boundaries of the City of Dunwoody, pursuant to the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, *et seq.* If such an agreement is reached, then this Agreement automatically terminates. The parties reserve all available remedies afforded by law to enforce any term of condition of this Agreement.

Section 4a. On December 1, 2011 at 2400 hours, the parties agree that the County's obligation pursuant to O.C.G.A. 36-31-8 and Section 6.03 of SB 82 to provide the government functions and services described in this Agreement shall terminate as contemplated by O.C.G.A. 36-31-8 and Section 6.03 of SB 82. Beginning December 2, 2011 at 0000 hours, the County may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the City. If the County intends to terminate this Agreement for cause, the County must notify the City in writing, specifying the cause, extent and effective date of termination. The City shall have thirty three (33) days after the date of the written notice from the County to cure the stated cause for termination. Beginning December 2, 2011 at 0000 hours, the City may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the County. If the City intends to terminate this Agreement for cause, the City must notify the County in writing, specifying the cause, extent and effective date of termination. The County shall have thirty three (33) days after the date of the written notice from the City to cure the stated cause for termination.

**Section 5.** Certain County watershed management personnel assigned to enforce county ordinances and issue citations shall take an oath administered by an official authorized by the City of Dunwoody to administer oaths, as prescribed by O.C.G.A. §§ 45-3-1 and 45-3-10.1 prior to undertaking services pursuant to this Agreement to enforce the ordinances referenced in section 2 of this Agreement within the City of Dunwoody. Watershed Management employees shall be and hereby are vested with the additional power to enforce the ordinances referenced in section 2 of this Agreement, to make arrests or issue citations incident to the enforcement of such ordinances, and to perform other tasks as are reasonable and necessary in the exercise of their powers. This vesting of additional powers to enforce such ordinances in the City of Dunwoody is made for the sole and limited purpose of giving official and lawful status to the performance of services provided by Watershed Management personnel within the City of Dunwoody. Watershed Management employees shall appear in the Municipal Court of the City of Dunwoody as necessary to prosecute cases made therein. The City agrees to compensate officers for their appearance in the Municipal Court pursuant to state law. The City of Dunwoody further agrees to provide, at its own expense, citation books containing the printed Municipal Court information to the county employees working within the City.

**Section 6.** All required notices shall be given by first class mail, except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. The parties agree to give each other non binding duplicate facsimile notice. Notices shall be addressed to the parties at the following addresses:

If to the County:

Richard Stogner, Executive Assistant  
1300 Commerce Drive 6<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-2883, Office number  
404-371-2116, Facsimile number

With a copy to:

William J. Linkous III, County Attorney  
1300 Commerce Drive, 5<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-3011 Office number  
404-371-3024 Facsimile number

If to the City:

City of Dunwoody  
  
\_\_\_\_\_, Georgia  
Office number:  
Facsimile number:

With a copy to:

Brian Anderson, City Attorney

(Insert address, telephone number and facsimile number)

**Section 7.** This Agreement may be extended at any time during the term by mutual consent of both parties so long as such extension is approved by official action of the City Council and approved by official action of the County governing authority.

**Section 8.** Neither party shall assign any of the obligations or benefits of this Agreement.

**Section 9.** The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City of Dunwoody or DeKalb County. All parties must sign any amendments to the Agreement.

**Section 10.** If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

**Section 11.** This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**Section 12.** It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City defend, indemnify and hold harmless the County and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the

City, its employees, officers and agents. The County shall promptly notify the City of each claim, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation.

**Section 13** It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the County defend, indemnify and hold harmless the City and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the County, its employees, officers, and agents. The City shall promptly notify the County of each claim, cooperate with the County in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the County participation.

**Section 14.** The indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the term of this Agreement.**Section 15.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF, DeKalb County and the City of Dunwoody have executed this Agreement through their duly authorized officers.**

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_(SEAL)  
Vernon Jones  
Chief Executive Officer  
DeKalb County, Georgia

ATTEST:

\_\_\_\_\_  
Michael Bell  
Ex Officio Clerk of the  
Board of Commissioners of  
DeKalb County, Georgia

APPROVED AS TO FORM:

\_\_\_\_\_  
William J. Linkous, III  
County Attorney

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Richard Stogner  
Executive Assistant

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

**CITY OF DUNWOODY, GEORGIA**

By: \_\_\_\_\_(SEAL)  
Ken Wright  
Mayor

\_\_\_\_\_  
Municipal Clerk

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Brian Anderson  
City Attorney

\_\_\_\_\_  
City Manager



# CITY OF DUNWOODY, GA

## CITY COUNCIL

Ken Wright, Mayor

Denis Shortal – District 1, Post 1  
Adrian Bonser – District 2, Post 2  
Tom Taylor – District 3, Post 3  
Robert Wittenstein – At Large, Post 4  
Danny Ross – At Large, Post 5  
John Heneghan – At Large, Post 6

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Monday, November 17, 2008	Work Session	7:00 PM
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### I. Public Comments

### II. Staff Discussion Items

#### Ken Wright – Mayor

1. Discussion of the Dunwoody Overlay District Zoning Regulations.
2. Discussion of the Georgia Power Franchise proposal.
3. Discussion of City Employees.
4. Discussion of IGAs with County.
5. Discussion of additional services provided by GMA.
6. Discussion of City Implementation.

#### Brian Anderson – City Attorney

1. Discussion of proposed Chapter 15 (“Business Occupation Taxes, Licensing and Regulation”) of the City Code and Ordinance to adopt and approve Chapter 15 of the City Code.

### III. Adjournment